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Chair

Mr. James Rajotte

Standing Committee on Finance

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•(0845)

[English]

The Chair (Mr. James Rajotte (Edmonton—Leduc, CPC)): I call this meeting to order.

This is the 106th meeting of the Standing Committee on Finance. Our orders of the day—we are televised, colleagues—are pursuant to Standing Order 108(2). We are continuing our study of tax evasion and the use of tax havens.

We have six witnesses here today. We have a very full panel and we have two by video conference, so it will be a challenge from a technological point of view. I will do my best, as chair, to ensure that times move along and that each witness and colleague gets their proper time.

We have with us here today, first, Professor Walid Hejazi from the Rotman School of Management at the University of Toronto.

Welcome back to the committee.

We have Mr. Robert Kepes, barrister and solicitor.

Welcome to the committee as well.

From the Quebec Association for the Taxation of Financial Transactions for the Aid of Citizens, we have the *président*, Monsieur Claude Vaillancourt.

Bienvenue à ce comité.

We have His Excellency Luis Carlos Delgado Murillo, Ambassador of the Republic of Costa Rica to Canada.

Welcome to the committee. Thank you so much for being with us.

We also have two by video conference. First, from Kuala Lumpur, Malaysia, we have Monsieur Pascal Saint-Amans, director of the Centre for Tax Policy and Administration for the OECD donor assistance committee peer review team.

Bienvenue à ce comité.

From the United Kingdom, we have Professor Paul Collier, a professor of economics and public policy at the University of Oxford.

Welcome to the committee.

We will start in the order that I presented. Each of you will have up to five minutes to make your opening arguments. Then we'll have questions from all members of the committee.

We'll start with Professor Hejazi, please.

Dr. Walid Hejazi (Professor, Rotman School of Management, University of Toronto, As an Individual): Thank you very much for the opportunity to appear before this committee to give my thoughts on the role of offshore financial centres and the role they play in the Canadian economy. This is a very important issue for the global competitiveness and prosperity of Canada, and therefore I believe policy-makers and the public must fully understand this issue in order to make the right policy decisions.

As you indicated, I'm a professor at the Rotman School at the University of Toronto. I've been a professor there since 1995. I've written extensively on Canada's competitiveness and the role of international trade, foreign direct investment, and the role of offshore financial centres.

I published a magazine article in *The Banker* in November 2012 on the importance of offshore financial centres to the global economy. I believe that article has been circulated to the committee. As my research demonstrates, there is a significant and broad-based benefit to the Canadian economy when Canadian multinationals undertake their international expansion through offshore financial centres. Canadian companies continue to expand globally at a rate faster than foreign companies are coming into Canada. Today Canada has more foreign investment abroad than there is foreign investment in Canada.

The empirical evidence is clear: both inward and outward investments have significant benefits to the Canadian economy. I can talk to both sides of these investments, but let me focus on the outward side.

Just as when foreign companies invest in Canada, when Canadian companies invest abroad, this generates significant economic benefits to the Canadian economy. These benefits include more global activities occurring in head offices of Canadian firms, more exports from Canada, and hence more employment and capital formation in Canada. All of these additional effects augment Canadian jobs and Canadian government tax revenues.

The natural question to ask is the following. When a Canadian company deploys a global strategy and uses a conduit jurisdiction such as Barbados, are these benefits sustained? The answer to this question is yes, and my research supports that. Furthermore, these benefits are not only sustained but enhanced. That is, when a Canadian multinational goes to a foreign market directly, the benefits to Canada are less than when they go to these foreign markets using an offshore financial centre. There's a lot of theory to support this empirical evidence, which I can elaborate upon if requested.

What this all means is that if Canadian multinationals are not allowed to use these jurisdictions to access the global economy, this will hurt their global competitiveness and hence the competitiveness of the Canadian economy. I will go further to argue that a move by the Canadian government to restrict the use of these jurisdictions will not—in capital letters—result in increased Canadian government tax revenue. It would be counterproductive policy that would reduce Canadian competitiveness and Canadian government tax revenue simultaneously.

I understand that this committee is interested in addressing tax abuse, something that every good Canadian and Canadian company applauds, but let's be clear: more tax abuse occurs in onshore locations than in offshore financial centres.

I would also highlight the following. My research has concluded that the use of offshore financial centres has helped Canadian firms expand abroad, but particularly in less familiar and more risky environments, as Mark Carney, the Governor of the Bank of Canada, has argued repeatedly. Canadian companies need to focus more on emerging markets where growth rates are much higher than in developed economies, but so too are the risks. We need to encourage Canadian companies to invest and expand globally and to be global leaders. Restricting the use of these jurisdictions' offshore financial centres will hurt the ability of Canadian companies to compete in those emerging environments.

Therefore, I think it would be wrong to restrict the use of offshore financial centres. That will not help Canada's prosperity. Rather, it will hurt Canada's prosperity.

Thank you.

●(0850)

The Chair: Thank you very much for your presentation.

We'll now hear from Mr. Kepes, please, with his five-minute presentation.

Mr. Robert Kepes (Barrister and Solicitor, Morris Kepes Winters LLP Tax Lawyers, As an Individual): Thank you, Mr. Chairman and members of the committee. I'm honoured to have been invited to appear today to assist in your study of tax evasion and the use of tax havens. I have been a tax lawyer in Toronto for over 25 years. Our clients are primarily private companies, entrepreneurs, owner-managed businesses, professionals, and high net worth families and individuals.

Our law firm provides only three legal services. We provide tax and estate planning, tax dispute resolution and litigation, and defence of criminal tax evasion and other financial or regulatory offences. Tax evasion is very different from legitimate tax avoidance or minimization. Tax evasion, at its core, is fraud. The evader's intention is to deceive the crown by failing to report income or by claiming false expenses in order to minimize income. The law requires the crown to prove beyond a reasonable doubt that taxes were owed and that the accused both knew that taxes were owed and deliberately avoided their payment. The most serious cases of tax evasion, usually involving amounts of taxes evaded of greater than \$250,000, are prosecuted either by indictment under the Income Tax Act or as fraud under the Criminal Code. The Criminal Code offence of fraud is frequently the preferred criminal charge for major,

complex tax prosecutions. My paper details some of the reasons why the crown may prefer to proceed under the Criminal Code rather than under the Income Tax Act. Generally speaking, it's a little bit easier to prove fraud than it is to prove tax evasion.

The investigation and enforcement of tax evasion, because it is a crime, engages the accused's charter rights, for example, those under section 7 of the charter, as well as the right against self-incrimination, freedom from unreasonable search and seizure, the right to legal counsel, and the right to be presumed innocent.

The committee has previously heard that, unlike tax evasion, tax avoidance is not a crime. That is a true statement. The Canada Revenue Agency takes a broad view that tax avoidance "involves minimizing tax by contravening the object and spirit of the law but not the letter of the law." I have to say I disagree with that statement. First, there is no "object and spirit" test in Canadian tax legislation. Second, the CRA may have made it sound as if tax avoidance is one shade of grey below tax evasion. That's not true. The gap between avoidance and evasion is wider than the Rideau Canal. Although the CRA and the Department of Finance dislike it, tax avoidance, even aggressive tax avoidance, is legal. It does not involve hiding assets, claiming false expenses or refunds, or the use of sham documents or entities. In fact, in my experience, all transactions involving a tax-minimization or -avoidance strategy are properly reported on financial statements and tax returns to the respective tax authorities.

I bring these differences between avoidance and evasion to your attention because it's not enough to understand the legal distinction between the two concepts. It's important to understand the CRA's powers and the limits of those powers, depending on whether it's engaged in finding avoidance transactions or in investigating tax evasion. A taxpayer is required to comply with an audit, with respect to avoidance, whereas the taxpayer has the right to silence under the charter with respect to tax evasion.

Now let's talk for a minute about tax havens and offshore accounts. The committee has heard various estimates of the amount being held by Canadian individual and corporate taxpayers in offshore accounts. If those numbers are to be believed, it's in the billions of dollars. No one seems to know how much of those billions is made up of potentially legitimate investments, but be that as it may, let's assume it's a large number. It's a given that tax evasion must be investigated and prosecuted. However, the government cannot manage what it cannot measure, and you cannot measure the total amount of proceeds from tax evasion, because it is, by definition, being deliberately hidden by the tax evader. However, the government should be able to measure the CRA's efforts and results in capturing tax evaders.

To that end, I did a very unscientific survey by searching the term “tax evasion” in the Canadian Legal Information Institute case law database. The search obtained 670 results, representing all of the Canadian court cases from 1900 that mention the phrase “tax evasion”. I narrowed the search to include the word “offshore” and obtained only 21 results. That strikes me as a very low number. I then went to the CRA website, because it routinely posts press releases of tax evasion convictions. There were 24 in the last three months, but none of them involved unreported income offshore.

• (0855)

Let me look at some of the recommendations. One of the recommendations is that the committee or the Auditor General has to annually measure the CRA’s progress in catching tax evaders.

If there are no offshore tax evasion cases, then either Canadians are much more law-abiding than we thought and the hidden billions offshore are a fiction, or, my theory, our tax evasion laws are not being vigorously investigated or enforced enough. Without investigations or prosecutions there can be no convictions, and as a consequence no deterrence.

To that end, I would ask the committee to perhaps look at something similar to the U.S. FATCA rule. That has its criticisms, because it is essentially the extraterritorial application of U.S. law. However, if you can’t get information government to government, you can do what the U.S. did—namely, try to get information directly from financial institutions.

I also considered whether the CRA could institute and encourage a whistle-blower program similar to that of the IRS, which pays awards to people who provide specific and credible information to the IRS if the information results in the collection of taxes, penalties, interest, or other amounts from a non-compliant taxpayer. The award can be between 15% to 30% of the amount collected.

For the sake of time, I’d be happy to take questions or comments.

Thank you.

The Chair: Thank you very much for your presentation.

[Translation]

Mr. Vaillancourt, you have the floor.

Mr. Claude Vaillancourt (President, Quebec Association for the Taxation of Financial Transactions for the Aid of Citizens): ATTAC-Quebec, the Quebec Association for the Taxation of Financial Transactions for the Aid of Citizens, thanks you for this invitation to appear before the Standing Committee on Finance. ATTAC is a non-partisan association that is active in some 20 countries. Established in 2000, ATTAC-Quebec is interested in issues relating to financial globalization, particularly issues relating to the taxation of financial transactions, tax havens and free trade.

We are delighted with the attention that the Government of Canada has paid to tax fraud and tax havens. Since our association was established, it has felt that there is a major problem creating even more injustice and significant budget issues that honest tax-paying Canadians must compensate for.

We would like to highlight an OECD report entitled *Addressing Base Erosion and Profit Sharing*. The report shows just how much

tax leakage weakens the proper operation of governments and, as a result, democracy.

A number of investigations in Europe have shown that large multinational enterprises like Google, Apple, Amazon, Microsoft and Starbucks did not pay their fair share of tax because of complex financial arrangements and the use of tax havens.

There is nothing to say that Canada is exempt from such practices because it has signed tax agreements similar to those signed in Europe. ATTAC-Quebec has often criticized the double taxation agreement between Canada and Barbados, which has resulted in direct investments by Canada in Barbados to the tune of \$53.3 billion. This agreement favours price transfers, among other things. It enables companies to register their profits in Barbados and bring that money back into the country without paying tax to the Canadian government.

A similar agreement concluded last fall with Hong Kong now makes it possible to do the same thing in Asia. Given the importance of trade exchanges with that continent, it all leads us to believe that a similar agreement will encourage the same type of financial manipulations that will harm the interests of Canadians.

We are also concerned about tax information exchange agreements with Switzerland and a number of Caribbean countries. These agreements may seem attractive, but they remain ineffective and actually facilitate tax evasion. The conditions for obtaining information are too demanding. Information is given only if it is requested in a context with extensive and numerous exceptions, which makes it easy to have an information request denied.

To get such dysfunctional agreements, Canada gave up far too much. In exchange, the Canadian companies established in these tax havens benefit from a tax exemption on revenue. Other countries, such as the United States and Australia, have not concluded this kind of agreement. It seems clear to us that the tax agreements that Canada has signed significantly contribute to increasing tax evasion.

ATTAC-Quebec has the following recommendations. The Government of Canada must make fighting tax fraud and the use of tax havens a priority. It must fund studies to provide figures on tax evasion and avoidance amounts, and to update the accounting practices that enable tax leakage. It must also invest in the Canada Revenue Agency so that it can undertake the investigations needed against fraudsters and detrimental tax planning.

The Government of Canada must put an end to all negotiation of tax agreements under the current model, and it must also thoroughly review the current agreements so that they no longer encourage tax leakage. The Government of Canada must strongly support the fight against tax havens in its foreign policy.

It must also work with other countries that are undertaking a similar fight. It must make a priority of supporting the UN committee of experts on international cooperation in tax matters.

Lastly, the Government of Canada must redistribute the amounts that are eventually recovered through the fight against tax leakage in the public services and social programs that were the main victims of the government's drop in revenue.

Thank you for your attention.

● (0900)

The Chair: Thank you very much for your presentation.

[English]

Next we will have Ambassador Murillo, please.

His Excellency Luis Carlos Delgado Murillo (Ambassador of the Republic of Costa Rica to Canada, Embassy of the Republic of Costa Rica): Mr. Chairman, honourable members, thank you for the invitation to join the Standing Committee on Finance of the House of Commons for this study session dedicated today to tax havens and fiscal *paradis*.

Today I have the opportunity to showcase for you how a small country has developed a strategic path that gives us today the credentials to promote our candidacy to the OECD membership, full of confidence in a solid ethical and transparent financial system that has allowed Costa Rica to achieve billions in foreign development investment.

In the last ten years, the country has achieved consistent growth in foreign direct investment, which has become a significant complement to domestic savings. Total FDI inflows have grown an average of 10% every year since 2000, currently representing 5% of the GDP.

Moreover, the country has had success in attracting foreign companies in innovative industries such as services, advanced manufacturing, and medical devices. As a result, foreign investment contributes greatly to Costa Rica's development in terms of export diversification, creation of more and better jobs, and accumulation of business capabilities.

Over the last 30 years, Costa Rica has accomplished consistent growth in its exports and in its diversification of its export products and destinations. Exports have grown at an average annual rate of 8% since 2001. We have free trade agreements with nearly all of our relevant commercial partners, including Canada.

Currently Costa Rica exports more than 4,000 products to 153 destinations. Due to the country's commitment to social inclusion, Costa Rica is considered to be a country with one of the best human development performances. Our universal health care and education systems are definitely the pillars of our national stability. Education has been mandatory for 100 years, and we invest 8% of our GDP in this area. At the same time, we invest almost 11% of our GDP in health care, making the system universal.

The country has a strong and world-renowned tradition and commitment to democracy and human rights. Costa Rica has been one of the most stable democracies in the developing world, with no breakdowns since 1949, when it abolished its army. This has enabled resources to be delivered to and invested in education, health care, infrastructure, roads, and telecommunications, strengthening our democracy and fundamental freedoms. As well, Costa Rica has a strong commitment to environmental protection and a decisive

commitment towards strengthening innovation and putting in place green growth strategies.

Thanks to its natural richness and environmental stewardship, the country is one of the top destinations in the world, especially for ecotourism. Annually we receive more than 120,000 Canadian tourists, and due to the high quality of life, more than 13,000 Canadians have decided to move to Costa Rica.

Our development is sustainable and inclusive. During the great financial crisis in 2008, we had a short recession and a strong recovery. Why have we done so well? We have a financial system based on prudential and efficient regulation. Even before the financial crisis started, we decided to set our financial regulatory standards above international minimums.

As a result, we have a solid institutional infrastructure that supervises and oversees the financial system. During the financial crisis, no banks failed or had to be rescued, and our financial system continued to provide credit to households and businesses. Additionally, we deployed a large fiscal stimulus package to stimulate the economy.

As we can observe in the graph, the GDP shrank in 2008 but had a strong recovery. Now it is expected to grow 4% over the next two years.

● (0905)

The Chair: You have one minute left, please.

Mr. Luis Carlos Delgado Murillo: As you can see in the following graph, while government expenditures increased during the global crisis, revenues declined. This situation resulted in a budget deficit equivalent to 5% of GDP. Given this, the priority of the government is to regain the capacity to respond in a similar way to future adverse shocks, safeguarding fiscal sustainability. Moreover, we are concerned because high fiscal deficits could affect our macroeconomic stability.

In the absence of the approval of tax reform, the government made a great effort to sharply slow down the expenditures growth rate, which reduced the fiscal deficit. We recognize there are many challenges to this, but we believe we have the credentials to promote our candidacy to the OECD membership, which could work as a catalyst to promote and pass some of the reforms the country needs to undertake. Therefore, the OECD will be an enabling partner in Costa Rica's path to development.

Over the last year Costa Rica has increased its involvement in the OECD bodies' foreign initiative. We are participating in areas that showcase Costa Rica, like finance, within the OECD, where we can provide quality contributions.

Costa Rica will provide the organization with perspectives that may not currently be represented at the OECD: a unique case of a small developing country with sound policies and successful results. Moreover, our country has shown the commitment to move toward OECD standards such as fiscal transparency and public governance.

In 2012, Parliament approved legislation intended to reform the tax structure in order to incorporate all the elements and access to financial information that were requested by the international community: the Law of Compliance of Standards of Fiscal Transparency, and the Law Strengthening the Tax Administration Procedures.

Additionally, Costa Rica has 15 tax information exchange agreements with several countries including Canada. For different reasons, we would like to request the continued support of Canada in the OECD council's deliberations.

Moreover, Costa Rica could be a successful example to spread better practices and promote transparency among small and middle-sized—

The Chair: If we could just wrap up, Ambassador, we are over time.

Mr. Luis Carlos Delgado Murillo: This initiative will open a new window to a country that is a middle-income country affected by aid allocations. Developing countries would benefit in two ways: first, by reducing the tax differentials between developed and developing countries, and then by promoting better practices among developing countries in order to address the problem of tax havens and overseas tax evasion.

• (0910)

The Chair: Thank you very much, Ambassador Delgado, for your presentation.

Next we'll go to....

[Translation]

Mr. Saint-Amans, you may start your presentation.

Mr. Pascal Saint-Amans (Director, Centre for Tax Policy and Administration, Organization for Economic Co-operation and Development Donor Assistance Committee Peer Review Team): Thank you very much, Mr. Chair.

[English]

For technical reasons I will speak in English, if you don't mind, as there is translation and interpretation. I apologize to your French-speaking colleagues about that. They will have to suffer my poor English.

Thank you for your invitation. I'm very glad to be able to share with you what the OECD is doing. It's an honour to be with you, if not physically, at least virtually. I'm currently in Malaysia for a peer review group meeting. This is precisely about what you are discussing today. The peer review group of the Global Forum is about checking transparency and checking the way countries implement the OECD standards on transparency and the exchange of information.

If I may, I would like to start with a few words on what the OECD is doing on tax matters. I'm the director of the Centre for Tax Policy

and Administration. We do some tax policy: what is good for growth in terms of tax policy design and what is good for employment to reduce inequalities and so on.

We also favour cross-border investment through the elimination of double taxation. I think the OECD is well known for having established the OECD model tax convention, which provides for a framework to eliminate double taxation, and it's translated into many bilateral agreements. I think there are around 3,000 tax treaties based on the OECD model tax convention.

As regards the topic that you are investigating, I would like to make two main points.

The first one is about tax evasion, lack of transparency, and the need for information exchange. It has been said that tax evasion is about fraud. It's about not reporting income. It's about hiding income in low-tax countries that are not transparent.

I don't really know what a "tax haven" is. Everybody has their own definition: it's a small, remote island with palm trees or a small country with many lakes that is lost in the mountains. It depends on your approach, but there is no legal approach there. What matters is the consensus that emerged at the OECD back in the 1990s defining a tax haven as having no tax, no transparency, no exchange of information, and no real activity. That's the only common definition that you can find from an international organization, but again, that doesn't matter much.

What matters is that we have all agreed. When I say "we", I mean the OECD member countries and now the whole international community. We all agreed that lack of transparency is an issue, because when you're able to hide money in a country where you are not physically present, or where you are not a resident, in order not to report the income arising to the countries where you are a resident, then there is a problem of tax evasion.

The attention of the international community, in particular of the G-20 and the OECD since 2008, has precisely been about fighting for more transparency and exchange of information. In 2009 at the G-20 summit on April 2, there was agreement to establish a list of countries that are cooperative and a list of countries that are not cooperative, with cooperation meaning "to exchange information on request". When you are asked to provide information to a partner, you must give this information, including bank information.

Major progress has been achieved since then. More than 800 tax information exchange agreements, bilateral agreements, have been signed. A multilateral convention on mutual assistance has now been signed by over 50 countries, including Canada, which still needs to ratify this instrument, and I mention that as you are members of Parliament. But major progress has been made in this area. Five years ago, bank secrecy was almost a rule in many countries. Now it's the exception: no more countries support bank secrecy.

What is interesting and has been mentioned by one of my predecessors in the panel is that a number of countries are moving towards automatic exchange of information, largely due to FATCA, the U.S. legislation, through bilateral agreements. There is now a move towards generalizing multilaterally the automatic exchange of information.

Very quickly, the second pillar is about the emerging problem of what we call “double non-taxation”. The OECD rules have been established to eliminate double taxation. A company shouldn't pay twice on the same income because it operates in two different countries.

• (0915)

But the rules we've established—model tax convention, transfer pricing guidance, and other standards—should not result in not paying taxes anywhere or in paying taxes in a jurisdiction where there are no taxes, such as the low-tax jurisdictions we've mentioned, through conduits or companies or by locating the profit in a place different from the place where the real activity is taking place; for instance if the real activity were taking place in Canada, and investments were in Europe, and all the profits, all the intellectual property, for instance, were located in Bermuda, Barbados, or those types of jurisdictions.

Very recently the OECD launched something you may have heard about, particularly in the context of the G-20, which is reporting called “base erosion and profit shifting”, to address base erosion and profit shifting, known as BEPS. The idea of fighting base erosion and profit shifting is to restore at least one taxation. We need to eliminate double taxation. We also need to eliminate double non-taxation. Why is this so? I will conclude with that.

There is a budget issue. As you know, at least in Europe, but not limited to Europe, unfortunately, many countries are facing budget deficits, and they need to collect the money that is owed to them. Second, this is an economic issue, because if you favour some types of investors against purely domestic investors, small and medium-sized companies in Canada that are not exposed to international transactions, they will have an effective tax rate much higher than that of multinational companies. This is distorted and this is not good for investment.

Finally, this is a political issue. Because of budget constraints, governments increase taxes almost everywhere and you cannot explain to the people that VAT is increasing, that sales taxes are increasing, that personal income tax is increasing, that corporate income tax might increase when, for some players, there is hardly any tax because of this tax avoidance, which is well known as aggressive tax planning using legal frameworks.

Thank you.

The Chair: Thank you very much for your presentation.

We'll next hear from Professor Collier, please.

Dr. Paul Collier (Professor, Economics and Public Policy, Blavatnik School of Government, University of Oxford, As an Individual): Thank you very much for inviting me to speak to the committee.

As for my own credentials, I'm a professor of economics at the University of Oxford. I specialize in international economic issues, especially in the poorest countries. Prime Minister Cameron asked me to be the adviser on Britain's G-8, leading on tax issues. Britain is the host of the G-8 this year. In fact, I'm invited to the OECD on Friday to talk about the same set of issues.

I'd recommend, incidentally, last week's issue of *The Economist* magazine, which had a 12-page feature on this very issue. If you missed that, *The Economist* gives you a pretty good overview of tax havens and their importance.

Both avoidance of taxes and evasion matter. Avoidance is a matter of abuse of the law. Evasion is a matter of concealment. Canada, like other OECD countries, has become a victim of both of these phenomena.

Most of my work is on poor countries, which have been victims of these things for a long time, for much longer. This is the rare case where, in fixing our own problems, in putting our own house in order, we actually benefit the poorest countries in the world as well. It's even more of a problem for them than it is for us, so I congratulate the committee on focusing on this.

I'll start with some comments on tax avoidance. Of course, laws have intents and objectives, as well as legal language, so smart lawyers on the other side of course will be finding ways to meet the letter of the law but not comply with its objective and its intent. That is a continuing process, and the tax tables reflect the phenomenon, whereby very smart and very highly paid lawyers have managed to get quite a bit ahead of the intent of the law. It's now important that we do a catch-up process.

There is no once-and-for-all fix. It's like how the body fights disease: you have a constant struggle of changing the locks as the germs innovate and the body defends. That's what a legal system has to do to try to keep pushing back against these smart lawyers who innovate.

What is the heart of tax avoidance on the international scene is the misallocation of economic activity, the pretense of the signed ownership of an activity in a zero tax environment when the real activity is taking place somewhere else. This has become very prominent, certainly in Britain because of the case of Starbucks that has recently come to light: the company has paid virtually no tax in Britain. It appears to run as a charity, but it does pay very substantial payments to a subsidiary company in the Netherlands Antilles, which happens to be a zero tax environment.

Starbucks pays tax on its activity in Britain in a country that happens not to levy any tax. For next year, Starbucks has offered to pay more tax voluntarily despite the fact, and indeed because of the fact, that it's selling less coffee. This paying more tax on selling less coffee demonstrates the astounding divorce between real activity and profits. For an international company, profits could become a voluntary activity.

As the previous speaker said, companies like Starbucks are competing against local firms that don't have that opportunity, such as, in Britain, Costa Coffee. The tax tables are introducing an element of unfair competition.

There are more than 700 independent tax jurisdictions in the world. Most of those jurisdictions cannot be locations for significant real economic activity. The fact that a lot of activity appears to be taking place in those places is just a demonstration of abuse, of tax avoidance.

• (0920)

Going from tax avoidance to tax evasion is about concealment, and the heart of concealment is setting up companies where the beneficial ownership, that is the true owners of the company, cannot be ascertained. This is a relatively recent phenomenon and it has grown to extraordinary proportions. The epicentres of this are the lawyers in advanced countries working in partnership with branch offices in tax havens.

There was a recent study by a British university in Australia sending out 7,000 e-mails to legal service providers, organizations that will set up legal companies. These 7,000 e-mails asked the law firms around the world to set up companies in which beneficial ownership could not be ascertained, and various degrees of incriminating information were placed in the e-mails. For example, we'll pay you more if you'll keep it all completely secret. The success rate of these e-mails, the proportion saying, yes, we'll do it, was 40%, and it went higher than 40% in the e-mails that offered extra payment for complete secrecy. So there is a very serious problem here. It is extraordinarily easy to set up these shell companies, which can then set up bank accounts so money can be hidden—

The Chair: Professor Collier, could I just ask you to wrap up your presentation briefly? We are going to get to questions very soon.

• (0925)

Dr. Paul Collier: Yes.

So there are both evasion and avoidance matters, and what can we do?

I agree with the idea of whistle-blowers. I believe we need to have much stricter liability for establishing beneficial ownership on the law firms that set companies up. I believe we need to move to automatic exchange of information. The on-request system of exchanging information between jurisdictions is not working, so it needs to be an automatic exchange with standardized compatible systems. Finally, there is a need for coordination amongst tax authorities. The G-8 in Britain is a real opportunity, a rare opportunity, to get that coordination. Canada will not be disadvantaged as long as it moves alongside the other G-8 members.

The Chair: Thank you for your presentation.

We're going to start with members' questions, and we'll begin with Ms. Nash for a five-minute round. I'll just ask colleagues if they could direct their question to a specific witness. That will be very helpful.

Ms. Nash.

Ms. Peggy Nash (Parkdale—High Park, NDP): Thank you, Mr. Chair.

Good morning and welcome to all of our witnesses. Thank you for being here.

I'm the finance critic of the official opposition, the New Democratic Party. We have been pushing to get this study of tax evasion and tax havens for some time, because we're committed to addressing the integrity of our tax system and ensuring that we are dealing with taxes that are not properly being collected by our country.

Obviously we recognize that there are legitimate reasons for investing in foreign countries. Mr. Hejazi and Ambassador Delgado Murillo, you both made the case for that, and we appreciate it. But I guess I come from the perspective that if you don't measure it, it's difficult to tax it, and we know that a quarter of all Canadian foreign direct investment is going to tax havens, or countries that provide tax havens.

In 2011 alone, Canadians invested \$53.3 billion in Barbados, \$25.8 billion the Cayman Islands, and \$23 billion in Ireland, just as some examples, and banking and financial services now account for 51% of Canada's total direct investment offshore. We've heard from both the Department of Finance officials and the Canada Revenue Agency that they do not measure the international tax gap, unlike the U.S., the U.K., and Australia.

My question is both to Professor Collier and to Mr. Saint-Amans. Should Canada be measuring the tax gap in order to help us address the issue of tax evasion and tax havens, and tax this revenue as effectively as possible?

The Chair: Let's start with Professor Collier, please.

Dr. Paul Collier: Yes, I think it would certainly concentrate the mind if you realized that you were losing a lot of money. My own work is largely on poorer countries and, of course, I favour investment in those poor countries, but investment that generates real activity.

What you're seeing in the Cayman Islands and Barbados is not investment in real jobs for real people, just strategies to avoid and evade Canadian laws.

Ms. Peggy Nash: Thank you.

The Chair: Mr. Saint-Amans, please.

Mr. Pascal Saint-Amans: Thank you, Mr. Chair.

I'm not sure I would say that you need to measure it to tax it. I think you can tax it without measuring it.

In the report that we have just issued, “Addressing Base Erosion and Profit Shifting”, we recognize or acknowledge that we don't know the amounts, and they are almost impossible to calculate. On the tax fraud part, you may have some methodologies to give you some ideas. You referred to the U.S. or the U.K. calculating the tax gap, but that's about fraud. When it's about avoidance, I think it's almost impossible to come to a number, and that's why we say tax it, and then you can measure what you tax. That's where you can get the difference.

So to try to sum up, I think going for calculating the tax gap is an avenue you can explore, and at the OECD we don't have strong views on whether it's better or not, but what I can tell you is that if you don't measure it, you can still tax it and you have to tax it. I refer to the BEPS report, base erosion and profit shifting report, where you can find some other elements to measure. For instance, if you refer to that foreign direct investment, when you see some very small jurisdictions accounting for more than 25% of investment in India—that's the case of Mauritius—or the British Virgin Islands being in the top 10 investors in Russia or in China, you guess that there is a problem there, and what you need to do is to track the problem by making the analysis.

• (0930)

Ms. Peggy Nash: Mr. Saint-Amans, just to clarify, you're saying it's difficult to measure tax avoidance, but for tax evasion and the use of tax havens, it would be possible to try to measure the gap. Is that your understanding? Or have I got you backwards on that?

Mr. Pascal Saint-Amans: No, I personally have a lot of difficulties measuring gaps. What you can do—what the U.S. and the U.K. are doing—to measure the tax gap is not focus on international economy but on the domestic, the underground economy and all that. That's what is measured through a tax gap. It's not only the international; it's the overall.

As regards the international only, I'm not sure you can come up with any figure, including on the fraud, on the evasion, precisely because you do not know the amounts that are hidden somewhere. So you have very strong hypotheses, assumptions, that you need to make when you measure a tax gap. This is an interesting avenue, again very difficult, but you don't need it to find or to take the measures, the actions appropriate to put an end to the phenomenon.

The Chair: Thank you. Thank you, Ms. Nash.

We'll go to Mr. Van Kesteren, please.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Thank you, Chair.

Thank you all for being here. This is a very interesting discussion.

If I had just tuned in, I would get the impression that there is this enormous, enormous problem worldwide that corporations are cheating governments. We had a witness in last week who estimated that in Canada it's approximately \$5 billion to \$7 billion. Now that's a lot of money, but when we put that in perspective to our overall budget, and if we take something like tobacco sales, for instance, from which we've pretty much lost the revenue because of the high price of tobacco or the high price of taxation, it's about the same. I think tobacco sales are about \$4 billion.

I want to steer this committee and I want to make sure that, as a committee as a whole, we keep this thing in perspective. Not to say that we can't and shouldn't go after tax evaders—and I think a number of you have made that very clear—but I'm wondering...

I guess I want to direct my first question to Mr. Saint-Amans. From the OECA perspective, first of all, is there an estimate worldwide of how much tax is being lost through tax evasion? Have there been studies to determine which countries are most effective? Finally, have there been studies done to see if there is a correlation between that and what happens when taxes are raised?

In this country, we've lowered our corporate tax, and I think most corporations—again, some of the testimony we've heard bears this out—understand that they need to pay taxes. Is there a correlation when nations or jurisdictions raise their taxes to a point where people start to cheat more?

First of all, to the OECA.

The Chair: It's the OECD.

Mr. Dave Van Kesteren: Yes, OECD.

The Chair: Mr. Saint-Amans, please. Can you respond to that?

Mr. Pascal Saint-Amans: Thank you very much for these questions. Again, we do not have any estimates. The only estimate we have is based on microdata. We reported to the G-20 last year that the progress in terms of transparency has yielded \$15 billion euros over the past three years to some G-20 countries. It's not a rough estimate because it comes from the agencies, but it's pretty small indeed compared to the figures we can find here and there. As you've said, what is behind that is not only the money you collect but the fairness that you introduce in the tax system. If some can hide without any risk and can avoid or evade, then this has an impact on the level of compliance in the country. There is a question of fairness and of undermining the trust in the fairness of the tax system.

Finally, is there evidence of correlation between the rise in the tax rates or the tax base and evasion? The answer is no. There is none, except the empirical evidence, except maybe in the area of indirect taxes on VAT. It is generally accepted, although I cannot refer to a precise survey, that 22%, 23%, and 24% of VAT has a massive impact on compliance with the tax. Obviously the more you ask from the taxpayers, the more likely they are to try to evade taxes. This needs to be put in the context of the efficiency of the government and what they get in exchange for the taxes they pay. That's where you can explain that the level of compliance in some countries with high taxes, such as the Nordic countries in Europe, is much higher than in some other countries where the tax level is lower.

• (0935)

Mr. Dave Van Kesteren: I just have a quick question, then. We have lowered our corporate tax. We've also hired more inspectors to do the proper job. Are those the two things that you would suggest are the best things that we can do as a nation to combat this problem?

Mr. Pascal Saint-Amans: What I can describe is the trend, and the trend indeed is to lower the rates of corporate income tax. And that's an OECD recommendation. To favour investments you need to have reasonably low rates for corporate income tax, and on the other hand to improve compliance. This is why we, the OECD member countries, have launched this initiative. The U.K. is leading this project, supported by Germany, France, Canada, Australia, New Zealand, and many other OECD countries to fight double non-taxation, because we fear that this will undermine the very existence of corporate income tax and we will have this distortion among domestic companies and international companies. It's better to have low rates but make sure that their effective tax rate is comparable to the statutory tax rate.

The Chair: Thank you, Mr. Van Kesteren.

We'll go to Mr. Brison, please.

Hon. Scott Brison (Kings—Hants, Lib.): Thank you very much, Mr. Chair. Thank you to each of you for joining us today.

Earlier today, the *The Economist* report was referenced called "Tax havens: The missing \$20 trillion". There's an interesting article in that report titled, "The OFCs' economic role: The good, the bad and the Uglad. Havens serve clean as well as dirty money". I appreciate your advice on this because Canada's foreign investment is an important source of economic and political influence for our country, and it's really important that we as legislators understand how we can differentiate between, for instance, transactions that are about achieving tax neutrality and those that are about tax cheating.

Your Excellency, investments in places like Costa Rica, Latin America, and the Caribbean are very important as you develop, diversify, and grow your economies.

In December 2011, China invested \$900 million to modernize one oil refinery. There's a growth of Chinese investment throughout Latin America and throughout the Caribbean in many of these countries that are deemed OFCs. Is it important that we differentiate that which is legitimate Canadian investment for the right reasons—to develop an economy and also as good investment for Canadian investors—and not diminish that or create barriers to that investment that could effectively reduce our influence and role in these very important developing economies and potentially create an opportunity for others who may be less transparent than our own investors ultimately? I reference the Chinese as potentially among that category.

Your Excellency.

• (0940)

Mr. Luis Carlos Delgado Murillo: Personally, I think that one of the tools that I have to measure the effectiveness of those foreign investments is how many jobs, new jobs, are in the economy. That's perhaps one of the reasons, because your country and my country are doing the best to grow the economy—but not only to grow the economy but as well to create more jobs. So perhaps personally, again, my answer is that I feel comfortable if we can measure the effectiveness of this activity with how many new jobs are created with this investment.

Hon. Scott Brison: But specifically, how can we differentiate between that legitimate investment, and even that investment that is designed to achieve tax neutrality in OFCs, versus outright cheating?

How can we differentiate that? Because I think that's a very important question for us in terms of how we proceed.

Dr. Walid Hejazi: That's a very important question, and I think it really comes down to the whole issue of transparency and disclosure of information. You think about the impact of deploying these global strategies on real economic activity; the work that I've done has looked at the impact on Canada. What the evidence clearly shows is when Canadian multinationals use the offshore jurisdictions to deploy global strategies, there are positive impacts on Canada.

Coming directly to your question, these are very difficult studies to do. The question is, will these positive benefits be the same in environments where there's a lack of transparency in contrast to environments where there's more transparency, and so on? The evidence tends to indicate that when there is more transparency, then the legitimate use of these offshore centres to deploy global strategies is the motivation.

Hon. Scott Brison: So is FATCA the best game in town in terms of... Not to make perfection the enemy of the good, but is that what we ought to be focused on? Is that the best way?

The Chair: You have 30 seconds.

Mr. Robert Kepes: I think the United States is in a unique position because it taxes its citizens based on citizenship. So if a U.S. citizen lives in the Bahamas, they still have to file a report of U.S. return. Same thing in Canada.

The problem with FATCA is that essentially it's the extraterritorial application of U.S. law. In other words, Canada is allowing the U.S. to get information directly from a Canadian financial institution about a Canadian resident. But short of that, you'd have to have a multilateral FATCA in order to achieve and get the results and get the information that the government would need in order to pursue the—

Hon. Scott Brison: The G-20 could be an operative.

Mr. Robert Kepes: Yes, but it becomes a little bit like pushing mercury. Outside of the G-20, even if you implemented a FATCA for the G-20, there might be a 21st, a 23rd country that would not comply with FATCA. There are probably financial institutions that are not complying with FATCA because they may not want to carry on business in the U.S.

Canadian banks do carry on business in the U.S. and the penalty for not complying with FATCA is severe.

The Chair: Okay, thank you.

Thank you, Mr. Brison.

Mr. Wallace, please.

Mr. Mike Wallace (Burlington, CPC): Thank you, Chair. It's my pleasure to be back here at Finance. It's a little bit of a déjà vu because I recall when I was still on the committee previous to the past election, we were studying tax evasion programs then. I think it's interesting the committee is still looking at it. But anyway, I appreciate the presentations today.

I do have a couple of questions. I'll start with our lawyer friend. There's a question that I had previously. To me, when somebody says tax avoidance—I buy an RRSP, I'm technically avoiding tax by delaying it, by paying it when I retire. So I'm more interested in the evasion aspects. But your profession was somewhat criticized by a professor from Oxford. As a tax lawyer, and a taxpayer, what is your actual responsibility to the people of Canada? If somebody comes in your office, and says “we would like to do this”, what is your legal responsibility in terms of advising clients? I don't want specifics, but give me a general, if you could.

Mr. Robert Kepes: Lawyers have an obligation to their clients, first and foremost, to be advocates for the client in a situation of either litigation or criminal matters. We have an obligation to be frank with our clients and to provide them with legal advice; in other words, to interpret the law, for example.

Lawyers have an ethical duty to the state: we have an obligation with respect to the courts. We are considered officers of the court. We cannot mislead a tribunal or a judge. That's essentially the obligation to the state.

However, confidentiality and solicitor-client privilege would prevent a lawyer from calling the CRA to report that a client has come into the office. We obviously cannot advise a client how to break the law; we have to tell the client that “this is the law”. But I do not have a duty to the state to ensure that the client files a tax return or reports his income.

It is similar to someone asking about drinking and driving. I can tell people what the penalties are for drinking and driving and I can tell them that they shouldn't do it, but I can't stop somebody from drinking and driving.

It's the same thing with tax avoidance. I can legitimately design a plan for a client and advocate for that client as to the legality of the plan, but I cannot contribute to a fraud or tax evasion or be a dupe of a client.

• (0945)

Mr. Mike Wallace: When the professor quotes a study done in Australia or wherever that was sent out to a number of law firms and reports the response, are you surprised at the response: that you got paid more if you kept it quiet, and so on?

Mr. Robert Kepes: As my initial action, I was reminded of that point in Shakespeare's *Henry VI*, part 2, when Dick the butcher says to Smith the weaver that if he were king he'd kill all the lawyers. That was my initial reaction to this, that it's always “blame the lawyers”.

Some hon. members: Oh, oh!

Mr. Robert Kepes: The room actually got a little warm.

It doesn't surprise me, because there is the existential dilemma between a self-reporting and a self-assessing system, and there is a

market economy and competition amongst law firms and accounting firms to attract and to retain clients.

I suppose the point is that if those law firms have broken an ethical law or have contributed to a client being able to commit tax evasion—that in and of itself is a crime, and I would definitely not condone that.

The fact that there is a beauty contest amongst lawyers or multinational accounting firms to provide clients with the most tax-efficient structures doesn't surprise me. That's just a function of the market economy and of competition amongst those firms.

The Chair: You have one minute.

Mr. Mike Wallace: Thank you.

Let me ask Professor Hejazi or Professor Collier from Oxford—you are from two very reputable schools that are well known around the world—would I be fair to say, from listening to both presentations, that you disagree as professors?

If I'm wrong, tell me I'm wrong, but if I'm right, what would you say the difference is?

The Chair: Give a brief response, please.

Dr. Walid Hejazi: We are looking at this from different perspectives. The whole idea of Starbucks is that it's exciting, and all of a sudden it talks about tax fairness and so on.

What I think about, in the research that I talk about, is this. This can be applied to any OECD country, but when a Canadian company deploys a global strategy through a jurisdiction such as Barbados, doing so increases the tax base in Canada. The simple fact that the revenues generated by a Canadian company globally can be repatriated to Canada free of tax does not mean that there are no tax implications. When one of our financial institutions does business in Latin America or Asia and the money is repatriated through Barbados, all of a sudden dividends are higher, head office functions in Canada are higher—there is a much larger tax base.

Most people talking about the Starbucks example are taking a very narrow view of the issue and are not thinking of it holistically.

The Chair: Thank you.

Thank you, Mr. Wallace.

[Translation]

Mr. Caron, you have the floor.

Mr. Guy Caron (Rimouski-Neigette—Témiscouata—Les Basques, NDP): Thank you, Mr. Chair.

I would like to thank you for your presentations. The subject is very interesting but quite complex.

My first question is for Mr. Saint-Amans.

In your presentation, you mentioned that a key issue in tax avoidance, tax evasion and tax havens was the question of transparency. But when measures like the Foreign Account Tax Compliance Act or even other automatic mechanisms for information exchange are mentioned, people complain because they say it is an invasion of privacy.

Where do you think we should draw the line between the need for transparency and the need to protect privacy?

• (0950)

[English]

The Chair: Monsieur Saint-Amans?

Mr. Pascal Saint-Amans: Thank you for this question. Again I'm sorry to respond in English, but I heard your question in English through the interpretation.

I have a couple of comments. One is that we have made very significant progress towards better transparency through exchange of information on request, which is very protective of privacy and confidentiality, as one of the conditions to exchange the information is to make sure that confidentiality will be protected within the requesting party.

Contrary to what Professor Collier indicated, exchange of information on request is working. There is evidence. I'm here in Malaysia to assess the effectiveness of information exchange, and we have published reports describing this. So the evidence is there.

When you move to some other forms of information exchange, such as automatic exchange of information—and that's the case through FATCA—the U.S. has been able to convince dozens of countries throughout the world to agree to an automatic exchange of information with them, or something that is equivalent to automatic exchange of information. Please note that the G-20 is now moving in that direction.

Within the OECD, we're working at developing a platform to facilitate automatic exchange of information for countries. One of the challenges is to ensure that a country will exchange automatically with another country that will respect the confidentiality of the information. We are working on establishing standards to make sure that we check the ability of another country to respect that confidentiality.

But privacy is respected. The exchange of information is limited for tax purposes, and the information will remain within the tax authority— or might go, if both countries agree, to other enforcement agencies, but it's not for public disclosure.

[Translation]

Mr. Guy Caron: I would like to make sure I've understood correctly. According to you, a mechanism, a philosophy or a direction like the Foreign Account Tax Compliance Act is acceptable on the condition that it is not unilateral, but multilateral, like in the context of the G20, for example. Is that correct?

[English]

Mr. Pascal Saint-Amans: FATCA is unilateral legislation, and the way it has been implemented is largely through bilateral agreements. If a country wants to negotiate an agreement with the U.S., it can negotiate this agreement, which can be reciprocal or not reciprocal. As regards the confidentiality part of it, if you move towards automatic exchange of information, the very strong recommendation is to make sure that the partner who will automatically get your information is able to protect it.

[Translation]

Mr. Guy Caron: I have a quick question. I would like a brief response from Mr. Saint-Amans, Mr. Hejazi and Mr. Vaillancourt.

This is our fourth and last meeting on tax havens, tax evasion, aggressive planning and transfer prices. These are important and complex matters. But there will be only one report at the end of four meetings. Do you think the committee should study each of these issues separately and draft separate reports on each one?

[English]

The Chair: That question is to...?

[Translation]

Mr. Guy Caron: My question is for Mr. Saint-Amans, Mr. Hejazi and Mr. Vaillancourt. I would like a brief answer.

The Chair: Okay.

Mr. Saint-Amans, you have the floor.

[English]

Mr. Pascal Saint-Amans: Transfer pricing is a matter different from transparency.

Transparency can help better implement transfer pricing rules, because if you have companies doing transactions with a secretive jurisdiction, you may lose track of the transaction and will not have the comparables, and therefore you will not be in a position to implement transfer pricing.

Transfer pricing raises a much broader issue, which is about how to price and whether you can locate the profit in a jurisdiction in which there is no physical or real activity. This is being addressed in the report addressing base erosion and profit shifting that I referred to.

The Chair: We're out of time.

Perhaps you could add a very brief comment, Monsieur—

[Translation]

Mr. Claude Vaillancourt: I fully agree with Mr. Caron. The issue of transfer prices is a basic one. That is probably where the amounts are the highest and most considerable. It isn't an issue that is addressed very often. The report will be quite valid, if only for that issue.

• (0955)

[English]

The Chair: Mr. Hejazi, do you have anything to add, briefly?

Dr. Walid Hejazi: To respect the time of the committee, I'll pass.

The Chair: Thank you very much.

We'll move on to Mr. Hoback, please, for your round.

Mr. Randy Hoback (Prince Albert, CPC): Thank you, Chair.

Thank you, gentlemen, for being here this morning.

The comments you made about studying, Mr. Saint-Amans, are very enlightening. I agree with you in many ways. I'm a grain farmer. When I go to look at my field in August, it would be nice to know how much wheat is sitting in that field. But I'm not going to spend a lot of time and effort which I could use in harvesting the field in studying it.

I think it's very important that we acknowledge that the best thing we can do is, as you said, keep going on taxing and on going after those who are evading taxes, instead of spending too much effort in trying to identify what the problem is. Both are important, but I think one is more important, and that's getting results.

Would you not agree with that, Mr. Saint-Amans?

Mr. Pascal Saint-Amans: I fully agree that it all needs to start with proper implementation of the legislation and proper enforcement of the legislation. We have a very close relationship with the CRA, the Canada Revenue Agency, which partakes in the forum on tax administration where the tax commissioners exchange best practices and the best way to implement and enforce the legislation.

It all starts with proper compliance, which needs good auditing services and good enforcement. But that doesn't prevent governments from identifying the problems. With tax avoidance, you may have some problems, and there, of course, you need to identify the roots. If something is legal, but you don't like it, what do you need to do? You need to change the rules. So when you have hybrid mixed matches, for instance, you have one qualification on top of another one in another country, and then you have double exemption, which is unintended. You may not like it because it's a loss of revenue, and then you may want to take action. This is also what we're doing.

Mr. Randy Hoback: Okay.

I'm going to take advantage of Ambassador Delgado being here, because I know Canada just did a tax information exchange agreement with Costa Rica, I think last August. You've done tax agreements with other jurisdictions. When you look at these tax agreements, how do you find them? How are they implemented in Costa Rica? What challenges do you face as a mid-economy? What are the things that we could do to help you meet up to those agreements, or make those agreements easier?

Mr. Luis Carlos Delgado Murillo: Perhaps what we are looking for is more cooperation between countries like Canada and ours, because in that sense if we improve the mechanisms within both countries, I am sure that we would reduce the intentions for those financial influence capitals that are willing to move to other places.... Perhaps they would still like to move, but personally I think if we work together, if there is more transparency between countries, I'm sure that those impacts will be reduced in the long term.

Mr. Randy Hoback: In your exchange agreements that you have, for example with Canada and the United States and other countries, are they all fairly similar in the way they process, the way they work?

Mr. Luis Carlos Delgado Murillo: Yes, they are very similar.

Mr. Randy Hoback: When you take a developed country that could be considered a tax haven or a place of tax evasion—avoidance is a different topic, but let's talk about tax evasion—what hurdles do they face, do you think? Do they actually have the ability

and technical know-how in some of these smaller developed countries to tackle this type of problem?

Mr. Luis Carlos Delgado Murillo: I beg your pardon?

Mr. Randy Hoback: In a smaller country, with a small economy that is known to be a haven or a place of tax evasion, do they actually even have the resources to combat that type of problem?

Mr. Luis Carlos Delgado Murillo: Perhaps. What we are looking for is, of course, to invite those influences to come to our country in order to reduce the asymmetries between the economies. In that sense, we can use those resources in suitable areas—you know which ones, medical devices, high-tech industries. These industries have very big inputs into our economy.

• (1000)

Mr. Randy Hoback: I think I'll leave it there, Mr. Chair.

The Chair: Thank you very much, Mr. Hoback.

We'll move on.

Monsieur Côté, go ahead, please.

[*Translation*]

Mr. Raymond Côté (Beauport—Limoilou, NDP): Thank you very much, Mr. Chair.

I would like to thank the witnesses for being here and for being available to answer our questions. My first question is for His Excellency.

Thank you for coming here to present the situation in Costa Rica. My question has to do with the steps taken by the Costa Rican parliament.

A few years ago, the OECD established that Costa Rica was one of the countries maintaining very strict banking secrecy. There was even some question that if the banking secrecy was violated, the death penalty could possibly be applied. Among the measures taken, was the possible application of the death penalty abandoned and was the criminal code amended? Unless my information is incorrect.

[*English*]

Mr. Luis Carlos Delgado Murillo: I didn't understand the question very well.

[*Translation*]

Mr. Raymond Côté: A few years ago, an employee who violated the banking secrecy in your country could be subject to capital punishment.

Is that one of the measures that was changed, in addition to what was adopted by parliament?

[*English*]

Mr. Luis Carlos Delgado Murillo: I'm not familiar with that situation.

[*Translation*]

Mr. Raymond Côté: Okay. Thank you.

Mr. Saint-Amans, in a meeting of this committee, some American elected representatives said that, given that Canada has greatly dropped its corporate taxes, Canada had become sort of a tax haven. That is their interpretation, obviously.

With respect to the work of the OECD to implement a multilateral cooperation to counter this situation, do you think this cooperation is worrisome given that multilateral negotiations have failed in various respects?

[English]

The Chair: Mr. Saint-Amans, please.

Mr. Pascal Saint-Amans: Maybe before responding to your question, I can say that Costa Rica didn't vote this legislation. I was not aware of it. Costa Rica is now fully compliant with all the standards, and of course has put an end to bank secrecy so there is no death penalty for that. I'm not even sure there is a death penalty in Costa Rica in general.

That said, Canada obviously is not a tax haven in any sense. Just the opposite, Canada is trying to improve its competitiveness, which I think is good policy, while ensuring companies and individuals comply with their legislation. Canada is also supportive of the work we are doing to improve the standards to ensure taxes on profits are paid where the profits accrue.

[Translation]

Mr. Raymond Côté: The chair is telling me that I have one minute left.

Mr. Kepes, you said that the legislation had to be applied very clearly. In any case, this interpretation comes from the courts, given that tax legislation does not set out the criterion of the object and the spirit.

I think you had an opportunity to study the Antle case, which involves a Canadian couple that established a tax avoidance strategy using a trust in Barbados. In this case, the court found that their stratagem was very far from the spirit of the law.

Do you have any comments on that?

•(1005)

[English]

Mr. Robert Kepes: I think there's a fundamental difference between when the Canada Revenue Agency talks about the object and spirit or the intention of the legislation versus the letter of the law itself. Canada has introduced what is known as the general anti-avoidance rule.

I'm familiar with the case you're speaking of. That particular situation involved somebody who wanted to set up an offshore trust in Barbados. That case introduced a very new concept to Canadian tax law, which is a corporation is resident either where it's incorporated, or where its mind and management is. That particular case, the Garron case, decided a trust can be resident where its mind and management is. I don't think that's the situation whereby the court looked at the object and spirit of the legislation. I think they took a concept under corporate tax law and applied it to a trust.

Canada did introduce the general anti-avoidance rule, which does say that a transaction can be re-characterized by the Minister of National Revenue to achieve a tax result as is reasonable in the circumstances if the avoidance transaction was an abuse or misuse of the act. The GAAR is probably 10 or 15 years old, and there are some cases now at the Supreme Court level that have looked exactly at what is a misuse and abuse.

The Chair: Okay, thank you.

Merci, Monsieur Côté.

Your Excellency, I understand you have a very brief response to Monsieur Côté.

Mr. Luis Carlos Delgado Murillo: Yes. I'm sorry for the answer, but in our case the penalty was abolished in 1870, so....

[Translation]

Mr. Raymond Côté: Very well.

[English]

Mr. Mike Wallace: That's money you can put in the bank.

The Chair: I think that clarifies it very well. Thank you.

Mr. Jean, please go ahead for your round.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Thank you, Mr. Chair.

Thank you to all the witnesses attending today.

Mr. Hejazi, the last time you were here, I think three years ago, testifying on tax havens, one of the suggestions you made was that Canada should continue on to lower its corporate tax rate. Now of course *Forbes* magazine has ranked Canada as the number one place in the world to do business and the jurisdiction with the eighth-lowest corporate taxes in all the world.

Are you quite pleased with how Canada has moved forward as a government in relation to corporate tax?

Dr. Walid Hejazi: Absolutely.

Mr. Brian Jean: In relation to what was mentioned previously, to measure the amount of tax evasion—I'm not a grain farmer, but I do fish—it's sort of like going fishing and telling you what I'm going to catch before I throw my line in the water. Wouldn't you agree with that?

Dr. Walid Hejazi: Yes. I think you could come up with better measures than just a simple guess.

Mr. Brian Jean: Exactly. In fact many methods would give you a more accurate scenario, but the truth is that what we need to do is to be more particular in relation to how we combat it itself and hope that we come up with a solution as far as the amount of the money overall goes. Would that be fair to say?

Dr. Walid Hejazi: Absolutely. I'm quite concerned that in reaction to stories like the one about Starbucks and so on, a policy that is too aggressive to address these issues misses the wider benefit that offshore financial centres can play for a country like Canada as we continue to expand globally.

Mr. Brian Jean: So it could actually hurt us?

Dr. Walid Hejazi: I think absolutely it could hurt us.

Mr. Brian Jean: So we have to be careful where we draw that line on the ground.

Dr. Walid Hejazi: Yes. There's a study by the Department of Foreign Affairs that looks at Canada's reach into the BRIC economies, into these emerging markets, and it shows that we are lagging behind other OECD countries in terms of our penetration of these other markets. We're too tied economically to the U.S. and Europe and Japan, and hence Mark Carney has been quite critical of Canadian companies and wants us to be more international.

My research shows that using these offshore financial centres allows us to offset the risks associated with going to these unfamiliar markets.

•(1010)

Mr. Brian Jean: Okay.

Some people have said that the CRA has an inability to pursue the complex offshore cases. I know that in Britain they've established a task force for a high net worth unit to pursue these. In Australia they've set up units to handle offshore tax avoidance. Would you suggest that's something Canada should do, that the government should move forward with?

Dr. Walid Hejazi: I don't want to go outside my area of research, but specifically any revenue generated in Canada should be subject to Canadian taxation. And anyone who uses any of these methods to avoid taxes legally due in Canada is committing tax evasion and should be prosecuted for that.

Offshore financial centres should not be used to shelter income legitimately earned in Canada. It should be legitimately taxed in Canada. So if I'm a company in Canada earning money, I should pay taxes that are legally due. If someone is using an offshore centre to hide that, that in my opinion is going too far.

But then it becomes very complicated. The question I deferred on earlier had to do with transfer pricing. When you have these very aggressive transfer-pricing strategies that allow companies to move profits from one jurisdiction to another, I think that's where the issue is. I don't think the issue is with offshore financial centres.

Mr. Brian Jean: In fact that was going to be my next question. If they suggest it's too complex, wouldn't it be better to simplify the process itself and get cross jurisdictions such as the United States and other major financial powers to agree to some other form of taxation?

Dr. Walid Hejazi: Without saying too much, because you're going into an area in which I haven't done formal research when I talk about transfer pricing, I would tend to agree with you.

The Chair: You have one minute.

Mr. Brian Jean: Mr. Kepes, would you suggest that it would be advantageous to Canada to pursue that? In the meantime we are going through and negotiating agreements, and we've been quite aggressive in these bilateral agreements with other countries and will continue that. Would it be to our advantage to look at the other options to make a simpler and less complex set of variables that would lead to more efficiency and fewer free rides?

Mr. Robert Kepes: There are actually enough laws and regulations for the Canada Revenue Agency to get the information they need. If there's a transaction going through Barbados or Ireland or wherever Canada has a double tax treaty, there is already legislation on exchange of information and there are provisions in

the treaty to provide that information. My concern, I'd call it—and I do this for a living—is that I just don't see the results or the efforts on the evasion side on the ground. I know the Canada Revenue Agency has increased the number of auditors, for example, in their tax avoidance area. They have hundreds of auditors looking at tax avoidance. They have centres of excellence dealing with international transactions. But I don't know if that's translating to what's known as the special investigations or the enforcement division within the Canada Revenue Agency. That's their internal police department.

Mr. Brian Jean: We have seen a tremendous increase, a threefold increase, in the amount of money we have identified over the last six years over previous years.

Mr. Robert Kepes: That's true, and the Canada Revenue Agency's website has a page devoted to convictions where they show the last three months of convictions. Maybe this would be something for the committee to get information on in terms of the referrals that are coming from the RCMP or FINTRAC, or even, on the convictions page of the CRA, how many of them actually involve offshore...?

There may be an issue—whether it's resources or training or just plain desire—that it's easier to get the low-lying fruit than it is to get those complex international tax evasion transactions. They're just very hard to find. I sympathize with the committee. And I sympathize with the CRA, to be honest. It's not like finding a body in a room where you can do forensics and you know that a crime has happened. Tax evasion, by definition, is deceit.

The Chair: Thank you.

Thank you, Mr. Jean.

We'll go to Mr. Rankin now, please.

Mr. Murray Rankin (Victoria, NDP): Thank you, Chair.

Thank you to the witnesses who've appeared.

I would like to focus my questions on Professor Collier and Mr. Kepes, and talk a little bit further about transfer pricing.

Professor Collier, you talked about multinationals making profits on voluntary activity, if I have your quote. The magazine *The Economist*, to which you referred us, talks a lot about possible reforms of the transfer mispricing, and it gives two suggestions. One is referred to as unitary taxation, which would aim to tax activities where they actually occur, it says, not where some tax adviser has shifted them, and companies would produce a single set of accounts on their worldwide profits and that's where the taxation event would occur, in that jurisdiction where the activity occurred. That's one idea they have.

The second idea I'd like your views on is the requirement that multinationals disclose the name, location, financial performance, and tax liability of each of their subsidiaries, and the role that the tax havens have played.

Do you think either or both of those ideas would help us address the issue of transfer mispricing?

I'd like to ask Professor Collier first, and then Mr. Kepes, please.

• (1015)

Dr. Paul Collier: I think the starting point is indeed transparency in reporting. I think that would take us a long way.

If I can cite it, the British accountancy profession has recently done a report on this. It concluded that in the end the best enforcement was transparency: that companies had to get themselves in a position whereby they could defend and justify publicly what they had done, and that if they couldn't justify it publicly, then they probably shouldn't be doing it. So if they took the transparency or corporate reporting showing whether there is a reasonable correspondence between the distribution of reported profits and the distribution of genuine economic activity, that is something that transparency could itself police.

If transparency isn't enough, then what are the alternatives? The alternatives are basically some system that overrides the company's own choice of how it divides up profits between jurisdictions and in the end assigns profits on some other basis. It's very hard to do that. It's very hard to get agreement on doing it.

Where I think you possibly could get agreement—and this is where the G-8 and G-20 are important—is in fact in this distinction between reasonable tax competition between, say, Canada and America, both centres of genuine economic activity, and abuse by tax tables, which are not standards of genuine economic activity but which come in with zero tax. The mutual zero tax is a situation that we very definitely want to avoid, whereas competition between centres of real economic activity in their tax rates is entirely legitimate and, indeed, healthy.

I think the full unitary taxation approach is not going to happen anytime soon, but I think there may be a halfway house in which first you get transparency, which polices things, and second, where there are blatant abuses, despite transparency, there is some agreement amongst the major centres of real economic activity that they will jointly police the abuse of the system that transfers profits to places that don't have real activity.

Mr. Murray Rankin: Thank you.

The Chair: You have one minute and you wanted Mr. Kepes....

Mr. Murray Rankin: As well, Mr. Kepes, if you could, I know that there was a case, the GlaxoSmithKline case, about transfer pricing last year, and I know that there's been some reaction to it. Perhaps you could speak to that in your answer.

Mr. Robert Kepes: Your questions are excellent. The unitary tax would require a complete rejigging of the international tax system in terms of how that's based. I think it's worthy of study. I think it would be very difficult to implement. I think you'd need to have an almost global tax-collecting entity to be able to make those allocations among countries, as opposed to leaving it up to each

country. The State of California tried to implement something like that for their state tax, and there was a hue and cry, let me tell you.

On the transfer pricing in Glaxo, the Glaxo case represents two things. Number one, it was a huge loss for the Canada Revenue Agency. On the other hand, it did provide a certain amount of certainty to Canadian companies and multinationals with respect to the Canadian law. That is because the Supreme Court of Canada essentially decided that the Minister of National Revenue should not supplement or replace a business person's commercial reason for having a transfer price or entering into a commercial transaction with that of the Canada Revenue Agency.

In other words, the fundamental issue in Glaxo was that there was an additive to their Zantac stomach ache remedy, and it was possible to buy that additive from a generic drug company for, let's say, a tenth of the cost. The Canada Revenue Agency reassessed Glaxo and said that the fair market value must be what the generic company sells that additive for. Glaxo went all the way to the Supreme Court to have the Supreme Court say no, that's not true, in spite of the fact that the generic company could be selling an additive for 10¢ a pound. The fact is that the related entities of Glaxo provided additional value added with respect to that additive, which justified that fair market value price. As I said, it's a loss for the Canada Revenue Agency, but it did provide a certain amount of certainty within the transfer pricing area.

Transfer pricing in and of itself is really only transactions between related companies, such as, for example, a Canadian parent or a Canadian subsidiary, typically of a U.S. parent company. It's a decision on what the proper transfer price is. There are mechanisms between Canada and the U.S. as to what happens if Canada decides that the price should be higher and the U.S. says no, that they think the price should be higher on their side. There are mechanisms to take that into account.

• (1020)

The Chair: Thank you, Mr. Rankin.

We'll go to Ms. Glover, please.

Mrs. Shelly Glover (Saint Boniface, CPC): Thank you, Mr. Chair.

Welcome to the witnesses.

I think we've heard enough from a variety of witnesses to dispute what Mr. Vaillancourt said about "let's stop these negotiations of TIEAs and let's just finance studies to find out what the tax gap was". I want to ask Monsieur Saint-Amans to add his two cents' worth.

Do you agree with Mr. Vaillancourt when he suggests that we should just stop negotiating TIEAs, that they're full of loopholes and they don't work, so we should just finance studies to figure out the tax gap?

Mr. Pascal Saint-Amans: We have elaborated a model tax information exchange agreement. We are currently assessing the effectiveness of the information exchange agreement through TIEAs, through DTCs, so we very much support the initiatives consisting of negotiating for the tax information exchange agreements, using the tax information exchange agreement, because it's good to have one. It's even better to use it to post the requests. We are also supporting the countries willing to move a step further, which is to move towards automatic exchange of information for further transparency.

Mrs. Shelly Glover: What are the challenges, Mr. Saint-Amans, in moving forward with automatic exchange of information agreements?

Mr. Pascal Saint-Amans: The challenges are first with the countries unwilling to move towards automatic exchange of information because some stand ready, and nowadays all stand ready to give tax information exchange agreements or tax convention. The global forum is taking care of that to make sure that if a country refuses to do so it's identified and the recommendation is made and this is brought to the knowledge of the G-20. But automatic exchange of information is not the standard. It's not the OECD standard and therefore it's under voluntary compliance.

The second aspect of automatic exchange of information is to make sure that it works properly. Here again the OECD is doing quite a lot of work to make sure that with the information you receive you can make the proper analysis of it and that it matches, because you can have two different languages and you can have two different IT systems supporting it. This is the nitty-gritty type of the work we are performing currently.

Mrs. Shelly Glover: Okay. I appreciate the work that you do because it will help us to develop some best practices.

I want to speak with Mr. Kepes. There are two issues that you brought up today and one I like very much, which is suggestion number 5 in your handout about encouraging a whistle-blower program. I would encourage this committee to seriously look at the suggestion you've made. I think it's a good suggestion. I come from a policing background and any time we can put forward something like this I think is good.

I do take issue with the comments you've made. You clearly did indicate that you're really not sure about it anyway and you don't know the answers when you talk about prosecutions and convictions for offshore account investigations. As you likely know, on the proof required to proceed to an actual criminal investigation, a criminal conviction, the threshold is much higher. It's beyond a reasonable doubt. When we're looking at audits, it's the balance of probabilities. This government has put forward a number of policy measures to ensure that we are tackling the problem with offshores in a variety of ways.

What you didn't address, and I think ought to come out on the record, is that we have voluntary disclosure. That's tripled since 2007 as a result of the measures put forward by this government. But we've also done many audits, which again, going back to the threshold, are being done because when we refer 150 to 200 cases every year to public prosecutions; they also determine whether or not there is some reasonableness for conviction.

So you can't just measure the CRA by the number of convictions. You must take into consideration—wouldn't you agree?—the voluntary disclosures, the audits, the fact that public prosecutions decide in the end whether there is a likelihood of conviction. I've been a police officer for a long time. We know people are committing crimes. Public prosecutions sometimes says they know it, but they don't have the proof for it, so they can't proceed criminally. Would you not agree that's a better balance of looking at the success of the CRA, taking them all into consideration, not just convictions?

• (1025)

Mr. Robert Kepes: I think you're right. First of all, as I said in my submission, the voluntary disclosure program is working and I think it works relatively well. The government has improved the voluntary disclosure program and has actually tightened it up.

Our firm does one voluntary disclosure per week. I know exactly what you're talking about. I know the typical profile of people who make voluntary disclosures. You're right. The voluntary disclosure program for people who have been evading tax has been a very large success.

Mrs. Shelly Glover: Because you've made the suggestion, the one I like, I do want to give you an opportunity to put it right on the record for those watching at home about what number 5 is.

Mr. Robert Kepes: Sure. Let me just address the tax evasion issue and the number of prosecutions. You are absolutely correct that it is much more difficult for the crown to mount a successful prosecution for someone who has evaded tax because of the charter rights that apply, the higher burden of proof, etc. On the other hand I was just surprised at the low number of cases dealing with tax evasion and offshore and so I—

Mrs. Shelly Glover: You are actually wrong about that.

Mr. Robert Kepes: It's possible.

Mrs. Shelly Glover: We're going to ask the CRA. I think I might be right and we'll ask the CRA to submit them because the convictions, as far as I remember for offshore accounts, I think 46 or something like that were there.... But anyway, when you compare it to other countries I'm sure it's almost double...if you look at Australia, etc.

Mr. Robert Kepes: I think you are doing the right thing by asking the CRA to come here and talk about that.

With respect to your other question about one of my recommendations, which is similar to the IRS whistle-blower program, I think frankly money talks. Because the information offshore is so difficult to get, I think it's great to talk about reforming the TIEA and having automatic disclosure, etc. I just don't know if that's likely to happen.

If you can implement a system whereby people can actually be rewarded for bringing in information and helping the government collect the tax or at least to identify these criminals.... It's successful in the U.S. apparently. Perhaps someone from the IRS could talk about it.

Mrs. Shelly Glover: I think it's a good idea. It's kind of like Crime Stoppers. I like it.

Mr. Robert Kepes: There you go.

The Chair: Thank you, Ms. Glover.

Ms. McLeod, please.

Mrs. Cathy McLeod (Kamloops—Thompson—Cariboo, CPC): Thank you, Chair. I would also like to thank all the witnesses. I think this has been a fascinating topic. We did start the study in the last Parliament and all the parties felt it was important to continue and to come forward with some good recommendations in terms of dealing with what is an important issue.

Because the actual title is tax evasion and the use of tax havens, I recognize the issues around avoidance but I'll try to focus in on the evasion issue.

I'd like to start with Mr. Saint-Amans. In 2009, a list of countries was created, the good and the bad list. Can you tell me if you've been looking at this list every year? How is the list of the bad changing? Is there some good progress in terms of the list of the bad?

• (1030)

Mr. Pascal Saint-Amans: The list in 2009 was designed to disappear quickly. If a list is to be successful it needs to disappear. Let me explain why.

In 2000, the OECD listed tax havens, meaning the jurisdictions that corresponded to the four criteria I referred to earlier. In 2002, the OECD did the list of unincorporated tax havens, meaning those that had not committed to implementing the standard.

In 2008, when the Liechtenstein scandal, which started all this renewal of the work on tax havens, occurred, we were in a situation where all the jurisdictions had committed but nothing happened in practice. So the way we designed the list for 2009 was to identify those that had not committed, and this was bad, and then those that had committed but had done nothing. Then we had an arbitrary threshold of 12 tax information exchange agreements, which was arbitrary, but that was something that had been agreed to by everybody and therefore we could use.

What happened was that in the days following the G-20 summit on April 2, 2009, those that were in the so-called black list immediately committed to implement the standards, and those in the grey list, which had committed but had fewer than 12 agreements, starting negotiating agreements. If you want to have information exchange, you need to have agreements.

This was very successful. Switzerland said it would take 10 years to get to 12. They did it in six months. That's why this list disappeared. But what we immediately did was to establish the global forum with new criteria.

The new criteria were that if you want to comply with the standard, you need to have the legislation in place, meaning you need to have agreement, not with 12 countries, but with all the countries asking for information from you. So if you have 30 agreements and you have Canada asking for an agreement with you and you say no, you are non-compliant.

It's good to have agreements but it's better to be in a position to implement them. To implement them you need to have the information available. So we are checking that the information on ownership, on accounting, on bank information, is available. If you have the agreement but you don't have access to the information when you're the tax administration, then there is a failure. So the global forum has set up a peer review mechanism in two phases.

Phase one checks whether all these elements are in place, and if they are not, the countries do not move to phase two, which I will come to in a minute. So it's not a list, but we identify those that are failing to exchange information by law. But if you have the law in place it doesn't mean you are doing it well.

We are going to check—and that's what we are doing today in Malaysia—whether you do it in practice. We check with all the partners of the reviewed country as to whether they are happy with the information exchange in practice. At the end of phase two—that's phase two, the checking practice—there will be an overall rating per country from compliant, largely compliant, partially compliant, to non-compliant.

You see that if it's not a list, it will give the ultimate test on whether a country does the job or not.

Mrs. Cathy McLeod: It sounds like, from a global perspective, we are getting much more comprehensive in our analysis and we'll have a much better focus.

I would ask for a quick answer to my next question because I don't think I have a whole lot of time and I have one other question to ask.

One of our previous witnesses suggested that this automatic exchange should be very simple in nature and then the TIEAs should kick in, so really the automatic exchange would be just focus on whether the person has an account in this country, and then using the TIEAs. Is that how you envision an automatic exchange? I don't know if you can answer that quickly or not.

Mr. Pascal Saint-Amans: No, I couldn't. But very quickly, they are complementary. I think exchange on request is one thing, but you can also do automatic and you can do automatic on bank information, you can do automatic on salaries, on pensions, on many other items of income.

The Chair: We're bumping up against time.

Do you want to put the question on record, Mrs. McLeod?

Mrs. Cathy McLeod: I would like to put on record that we do a request to the CRA because I asked for a briefing and was very pleasantly surprised not only with our conviction rate, but how we compared to other countries in terms of tax evasion, offshore bank accounts, and conviction rates.

So could we ask the CRA to submit to the committee.

The Chair: Okay, we could certainly ask on behalf of the committee. Is there anything further you wanted to put on record?

• (1035)

Mrs. Cathy McLeod: I'll just leave it there. If they could just submit that information I think it would be very helpful.

The Chair: I will absolutely do that on behalf of the committee.

Mr. Rankin, I understand you have a one-minute question, and then the chair will wrap up here.

Mr. Murray Rankin: Thank you for your indulgence, Chair.

This is a question for Mr. Kepes concerning enforcement.

In one of your earlier interventions you mirrored what one of our earlier witnesses said, referring to a CRA study in October 2010 that revealed “tax practitioners believe the CRA is not doing enough to catch or prosecute tax evaders”. I think you reflected that perspective. But you very usefully put a number of enforcement ideas in your brief, and like Ms. Glover, I'm very attracted to your idea of the whistle-blower, for example, as one idea.

But I want to ask you two others quickly. First, is there any scope, as there is in other areas of regulatory law, for administrative monetary penalties—in environmental law, that's virtually all they use now, for example—in order to avoid what you've talked about in terms of the charter, and criminal law, and all of those difficulties?

Second, would you go along with what Senator Levin in the States has suggested, which is that there be strong penalties on “tax shelter promoters and those who aid and abet tax evasion by increasing the maximum fine to 150% of any ill-gotten gains?” How would you feel about that as another enforcement idea?

The Chair: Mr. Kepes, please.

Mr. Robert Kepes: Sure. I'll just answer the first part of your question—and it's a great question.

I think the government has to make the choice as to whether, if prosecutions are difficult and the information is difficult to find, we're not going to go after the speeders who are going 110, 120 kilometres an hour on the highway, we're only going to go after the ones who are going 200 kilometres an hour. That's a government decision to make. If it's difficult to get a prosecution and the government decides they're going to levy financial penalties, that's for them to make.

My personal view on it is I don't think the state should abdicate its responsibility to enforce the law. Tax evasion is a crime. The fact that it's difficult is no excuse, in my view.

But there are administrative penalties, to answer your question, under the Income Tax Act. So there is a penalty, a gross negligence penalty, which is equal to 50% of the tax. For unreported income, it's a standard that it will be assessed by the CRA for someone who has unreported income.

There are penalties for advisers, whether that's a lawyer, accountant, financial planner, if they participate or acquiesce in the making of a false statement by a taxpayer. So it's a way to get advisers. Unfortunately for the government, that penalty has actually been determined by the tax court to be a criminal penalty because it's essentially infinite. Anyway, I'm happy to get into it. That penalty does exist, and assuming it is upheld as a civil penalty, it does provide a very, very large sanction for tax shelter promoters or anybody who participates in the making of a false statement, helping a taxpayer lie on their return, essentially.

The Chair: You could certainly submit anything further to the committee, Mr. Kepes, and that certainly goes for all of our witnesses.

I just wanted to wrap up with a couple of points. Again, Mr. Kepes, your sixth recommendation talks about FATCA. I'm sure you're aware of the concerns expressed by Canadian financial institutions with respect to what they have to disclose to the U.S. government. Perhaps I'd get you to address it. How do you do automatic exchange? I think everybody nods and says that sounds like a very good idea until it's actually implemented in a practical sense, and then it has some implications that obviously we need to be concerned about. Perhaps you could address that.

The second item I wanted to put on the agenda was Professor Collier did put the Starbucks example on the table. It seems to me that is something we do have to take seriously, maybe not in a tax evasion sense but in a public policy sense. If a company is simply using a zero tax jurisdiction for tax purposes to be competitive, that's something we have to be concerned about from a public policy point. His Excellency certainly addressed it in terms of investing in a country like Costa Rica versus simply using a country for its tax status. Mr. Brison also followed up on that.

Perhaps you could speak on the FATCA issue, Mr. Kepes, and then if someone wants to—Mr. Hejazi, perhaps—you may address the Starbucks example again.

Mr. Kepes, please.

Mr. Robert Kepes: I have just a 10-second comment on Starbucks. I guess the question is whether there's any proof of unfair competition to the extent that if Starbucks is selling coffee at \$3.00 a shot, does that mean the local retailer is being prejudiced? That would be a question I would like to know the answer to before Starbucks is criticized for how it structures its international affairs. If it does lead to unfair competition, it's definitely an issue.

With respect to automatic exchange, how that would work on the ground is that someone—a snowbird—would walk into a bank in Florida and ask to open a U.S. bank account, that U.S. bank would report to the IRS, and the IRS would report to the CRA. That is how automatic exchange works today between Canada and the U.S. Then of course, you're catching an awful lot of innocent people, who are having that information provided to the Canada Revenue Agency, because every Canadian snowbird who opens up an account is going to be reported. You have an enormous amount of information that would be flowing from one country to another. That's how the automatic exchange would work.

You would just end up having to extend it to each one of the countries Canada would have those agreements with. Presumably those countries have entered into these TIEAs, which only allow for information on request, because there's a balance between not allowing the government to go on a fishing expedition and trying to capture everybody who has an account in Miami.

•(1040)

The Chair: Okay, I do want to follow up on that in terms of whether FATCA, as it's structured now, could be better structured or could be implemented in a better way.

Mr. Robert Kepes: Well, from being the chair of the tax executive of the Ontario Bar Association, I know there are members of our executive who are tax lawyers who either work at a bank or advise banks. The amount of administrative nightmare they're going through to comply with FATCA is a common complaint. That administrative burden and those additional costs that are being borne by those Canadian financial institutions presumably are not going to be taken out of their pockets, and presumably consumers may see them in either higher interest rates or higher bank charges. But my point about FATCA is that it's not enough to have an agreement between two countries, because you're always going to have a third country that will have a bank that will not comply with something like that because they're not carrying out business in the U.S. That's why I said you have to make it multilateral, if FATCA is the way to go, and you'd have to have at least the G-20 involved.

One comment I would make is that big money is nervous. As you said, it's very easy to speak about tax havens. The fact of the matter is that most people are not going to put a million dollars in the hands of some middleman, unless they are career criminals and that's a different story. But if you're talking about business people who want to structure their affairs, even if they wanted to do something avoidance-related, I don't see them putting millions of dollars into the hands of a third-rate bank that is not tied to an international exchange system.

The Chair: Okay. I hate to cut you off.

Mr. Hejazi, do you have a brief comment on the Starbucks question?

Dr. Walid Hejazi: Just very quickly, if I may give a parallel example, I look around the room and I see lots of Apple products. If you look on the back to see where it is made, you will see "assembled in China" but "designed in California". The reason that's an important issue is the following. Even with transparency, even with disclosure, it's not magic to allocate profits across jurisdictions. So when we go and buy an Apple product for \$1,000, how much of the profit Apple earns should be allocated to each of the jurisdictions? It's related to taxes, absolutely; that's where the transfer pricing comes in. But it's related to the value added, the functions, the risks, and so on associated with the global supply chains.

So, if we think about Starbucks, for example, one needs to think about the functions, what's actually done in the U.K. when someone goes out and buys a tall latte. Then one needs to think about all the work Starbucks did to generate the brand. When you think about the brand and so on, not all of that can be allocated to selling the coffee in the U.K. You have to think about these things very carefully. So, on the issue of transfer pricing, one needs to think very carefully about the distribution of value across the supply chain.

It's not straightforward even in an environment where there's transparency, because there's a lot of interpretation, as the Glaxo case we just talked about referred to.

The Chair: Okay. I'm terribly sorry, but unfortunately we are bumping up against time here.

Ms. Peggy Nash: I'd just like to request a document.

I would like to request that the OECD report from last week addressing base erosion and profit shifting, which Mr. Saint-Amans referred to in his testimony, be tabled with the committee for our consideration. It's a very recent, very pertinent document that Canada would have participated in.

• (1045)

The Chair: Is it a public document?

Ms. Peggy Nash: It's a public document. I just would like it to be tabled with the committee as evidence for our study.

The Chair: Okay. We'll have the analysts and the clerk distribute that to members.

I want to thank you all very much for joining us today. If you have anything further in any of the questions that were posed or any of the topics that you wish to submit to the committee in our deliberations, please do so through the clerk. But, again, thank you very much.

[Translation]

Thank you for your presentations.

[English]

Colleagues, we do have a couple of quick items for committee business, so I'm going to ask the committee members to stay at the table, but I will thank our witnesses here.

Thank you so much for being with us here today.

Colleagues, quickly, we have the fifth report of the subcommittee. The only change in item number 1 is that the clause-by-clause consideration of the bill will take place on March 28, not February 28.

Mr. Mike Wallace: So moved....

The Chair: It is so moved.

Are all in favour?

(Motion agreed to)

The Chair: Secondly, for the committee budget....

Do you want to move it?

Mr. Guy Caron: No, I have an amendment to propose, though.

The Chair: Okay.

With respect to the budget, the amount requested is \$36,700.

Order, order.

Mr. Mike Wallace: The meeting's still going on, folks.

The Chair: Who wants to move it?

Mr. Mike Wallace: I'll move it.

The Chair: It is moved by Mr. Wallace.

[Translation]

Mr. Caron, do you have anything to add?

Mr. Guy Caron: With respect to the people from Vancouver, I would like to suggest that we give them the opportunity to appear by videoconference, if they wish.

The Clerk of the Committee (Ms. Christine Lafrance): Done.

Mr. Guy Caron: Already? Excellent. Thank you.

[*English*]

The Chair: Okay.

[*Translation*]

Mr. Guy Caron: That's fine.

[*English*]

The Chair: All in favour of the budget...?

(Motion agreed to)

The Chair: Ms. McLeod.

Mrs. Cathy McLeod: I do think it's important to use video conference whenever we can. As someone from British Columbia, I'm a little bit sensitive to the fact that we would perhaps at times not give people the same opportunities as someone in Toronto or Montreal would have—they could appear in person—by virtue of the cost. I just hope that we maintain that balance, that just because you're from the west that you're not having an expectation of saving the dollars, whereas Toronto and Montreal, we don't question the ability for them to appear in person.

Thank you.

The Chair: I think that's certainly a fair point.

Monsieur Caron, on this point....

[*Translation*]

Mr. Guy Caron: I mentioned the people from Vancouver, but this could also apply to witnesses from Toronto, Montreal or elsewhere. The idea is to give them the opportunity to choose. If they want to come here, they are free to, but we can also give them the opportunity to appear by videoconference if travelling so far is inconvenient for them.

[*English*]

The Chair: Okay.

I have two reminders for the committee, very briefly.

I still need from members their interest on which clauses of Bill C-48 they want officials to address. I don't need that right at this meeting, but I would like it today. The government has indicated, in terms of focus, they'll agree to whatever officials the opposition wants to focus on, if I understand that correctly. That's the first item.

The second item is estimates. Supplementary estimates have been sent to the committee, and will be sent to members' offices today. If the committee wants a meeting, please talk amongst yourselves and with your colleagues in your party as to whether you would like a meeting on the supplementary estimates.

Ms. Nash.

Ms. Peggy Nash: I know you'd like it as soon as possible, but for Bill C-48 do you have a hard deadline, just so we can tell our staff?

The Chair: We could say 11 a.m.

Some members: Oh, oh!

The Chair: Can we say 5 p.m. today? Is that fair?

Ms. Peggy Nash: Seriously?

The Chair: It's something I've asked for, for a bit of time.

Ms. Peggy Nash: All right, they're saying yes.

The Chair: Oh, good.

Ms. Peggy Nash: I was prepared to go to bat for them.

The Chair: I have a lot of confidence in your staff.

Okay, let's say at 5 p.m. today.

Thank you. It was a great meeting.

The meeting is adjourned.

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