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## **Standing Committee on Public Accounts**

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**EVIDENCE**

**Wednesday, February 26, 2014**

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**Chair**

**Mr. David Christopherson**



## Standing Committee on Public Accounts

Wednesday, February 26, 2014

●(1530)

[English]

**The Chair (Mr. David Christopherson (Hamilton Centre, NDP)):** I now declare this 16th meeting of the Standing Committee on Public Accounts in order.

Colleagues, we are here to hold a public hearing on chapter 9, “Offshore Banking—Canada Revenue Agency”, of the fall 2013 report of the Auditor General of Canada.

A couple of minor housekeeping matters before we begin... Welcome, Mr. Chisu, who is here today and subbing in. Welcome, sir, I hope you enjoy your time with us.

Also, colleagues, you will recall just two days ago we had another public hearing, and at that time, because we had to move, we lost some time and we agreed we would try to hold that business meeting that was scheduled for then today. So there has been some consultation with caucus leadership and it's my understanding that we are in agreement that whatever comes first, the full rotation of the speakers or 5:15, I will end the public session and move us into a business session where we will then review the scheduling going forward.

There's another thing that will complicate things, and I'll just say it in case people see the commotion. The bells are going to ring at 5:15, too. That's why I needed unanimous agreement for us to continue past because members have the right to say I want this over and I'm responding to the bell. My understanding is that we have agreement, and at 5:15 to no longer than 5:30, the scheduled end of our meeting, we will conduct committee business.

Do I have that correct? Have I got what we are...? Is there anybody who wants the floor to argue differently?

Hearing none, I will declare that we have unanimity on our approach today.

With that, we will now commence the focus on chapter 9.

I will welcome Marian McMahon, the assistant auditor general. Welcome. You may introduce your delegation and then we'll be going over to the Canada Revenue Agency, Mr. Montroy, to do the same thing.

Ms. McMahon, you have the floor.

**Ms. Marian McMahon (Assistant Auditor General, Office of the Auditor General of Canada):** Thank you, Mr. Chair. Thank you for the opportunity to discuss our audit of the offshore banking.

I am accompanied today by Heather Miller, the director who was responsible for this audit.

For our chapter on offshore banking, we focused our activities on the Liechtenstein bank list. This list was received by the Canada Revenue Agency from an informant in 2007. The agency has since received other similar lists.

●(1535)

[Translation]

We looked at whether the agency had a sound approach to deciding who to audit on the Liechtenstein list. We also examined the agency's audit files on those taxpayers, to see whether the agency followed its standard procedures.

In addition, we examined how the agency used the intelligence gained from this project to change how it finds Canadian taxpayers who may have unreported income in offshore accounts. We also looked at the changes to procedures for auditing this type of taxpayer.

The agency had not audited every taxpayer on the list. Nevertheless, we found the work it had conducted was sufficient, given that some names on the list were not Canadian residents and some could not be identified. Without additional information, there was little more the agency could have done.

The agency followed its standard procedures in most of the audits and conducted them without undue delay. We found that standards had not been established for the time it should take to complete files. As a result, we could not conclude on whether any delays caused by the agency were excessive. Standards for completing files on time would allow staff to gauge when their work may be taking too long or when they may need to change priorities.

[English]

We also found that the agency agreed to waive its ability to refer taxpayers for criminal investigation in some cases. It did so in exchange for information it may not otherwise have received. For example, by making these arrangements the agency learned how the offshore accounts were set up. Agency management told us that these agreements were only being used for the Liechtenstein list and that they were not being offered to those on subsequent lists. We are concerned, however, because we found that agency staff continued to make such agreements with some taxpayers whose names appeared on a more recent list.

We recommended that the agency analyze how it makes agreements with taxpayers it is auditing to ensure that these agreements reflect agency project and program objectives.

Since receiving the Liechtenstein bank list the agency has received additional lists and information about taxpayers who may be Canadian residents and who may have offshore accounts. As well, changes in legislation will give the agency access to information about international fund transfers of more than \$10,000. The agency needs to formalize its approach to dealing with the increase in its workload resulting from these developments.

We recommended that the Canada Revenue Agency ensure that its objectives and audit procedures for offshore accounts reflect lessons learned. They should be documented and understood by staff so that staff members are ready for the projected increase of work in this area. The agency agreed with our recommendations and made several commitments in its response. We received a copy of the action plan the agency submitted to the committee and found it consistent with our recommendations.

[Translation]

Mr. Chair, this concludes my opening remarks.

We would be pleased to answer the committee's questions.

**The Chair:** Thank you very much.

[English]

Mr. Montroy, you have the floor, sir.

**Mr. Richard Montroy (Assistant Commissioner, Compliance Programs Branch, Canada Revenue Agency):** Thank you, Mr. Chair.

I am here today with Ms. Gina Jelmini, who is our director of the offshore compliance division in our branch.

The CRA is pleased to have the opportunity to come before the committee today to speak about the Auditor General's report, chapter 9, "Offshore Banking", which dealt with the Liechtenstein list received by the CRA. We appreciate the opportunity to highlight the CRA's efforts in combatting offshore tax non-compliance and to once again thank the Auditor General for his recommendations.

International tax evasion and aggressive international tax avoidance using offshore accounts are worldwide concerns and Canada is among the many countries taking action to fight this complex problem.

In 2007 the CRA was provided with a list containing information on individuals identified as potentially having undeclared income in offshore accounts in Liechtenstein. This was the very first time that such a list had been received by the CRA. Through its management of the list the CRA gained valuable intelligence about these types of offshore investment structures. This intelligence will assist the CRA in further detecting taxpayers who may have undeclared offshore income.

The Auditor General's report stated, "Overall, the Agency managed the Liechtenstein list as intended, with the information and tools it had."

The report listed three recommendations, all of which were accepted by the CRA. The agency is taking a number of steps to address the issues identified in the report including establishing and communicating timelines to both staff and taxpayers involved in carrying out audits related to offshore accounts, analyzing its use of agreements with taxpayers under audit to ensure that their use reflects agency offshore project and program objectives, and ensuring that its objectives and audit procedures for offshore accounts reflect lessons learned and are documented, communicated and understood by staff.

● (1540)

[Translation]

In addition, new measures announced in the Economic Action Plan 2013 will provide the CRA with additional tools that will further build the CRA's capacity to combat international tax evasion and aggressive international tax avoidance.

These new measures include the following ones.

There is a new Offshore Tax Informant Program, or OTIP, which was launched in January of this year. The OTIP will pay individuals with knowledge of major international tax non-compliance between 5% and 15% of the federal tax assessed and collected as a result of the information provided.

We will require financial institutions and others to report information on international electronic fund transfers greater than \$10,000 to the CRA.

We will also introduce enhanced reporting requirements for Canadian taxpayers with foreign income or properties, as well as extend the amount of time the CRA has to reassess those who have not properly reported this income.

The Canadian government has also committed \$30 million over five years in support of these new measures to increase compliance efforts.

[English]

To oversee the implementation of these new measures, the CRA has established the offshore compliance division, which is a dedicated team that will be composed of 70 CRA employees with expertise in the fields of data analysis and auditing. This division will work with specialized teams whose focus will be on identifying individuals who engage in international non-compliance, developing and implementing effective strategies and program activities to counter offshore non-compliance, and increasing the CRA's overall ability to pursue cases of international tax evasion and aggressive tax avoidance.

Information sharing and international cooperation are key. The CRA has significantly improved its ability to obtain tax information from other jurisdictions through revised tax treaties and tax information exchange agreements, otherwise known as TIEAs, with non-treaty countries. Canada has one of the most extensive tax treaty networks in the world, with 92 tax treaties and 18 TIEAs now in force. All 18 TIEAs, it is important to know, have entered into force since 2008, as did four new tax treaties and eight updated tax treaties.

[*Translation*]

On November 21, 2013, Canada ratified the Convention on Mutual Administrative Assistance in Tax Matters. This convention is a multilateral instrument, whose purpose is to improve international tax cooperation and exchange of information between taxation authorities, in accordance with international standards, with a view to combatting international tax avoidance and evasion.

[*English*]

The CRA has a solid record in finding and resolving cases where individuals were participating in or promoting aggressive offshore tax avoidance, and we are seeing results. Since 2006 the CRA has audited nearly 8,000 cases suspected of having an aggressive international tax component and has identified approximately \$4.58 billion in additional federal taxes from these compliance activities.

Through the CRA's voluntary disclosures program, taxpayers have an opportunity to correct their tax affairs prior to being audited by the CRA. It is the most efficient way for the CRA to address unreported income. Since 2006 the CRA has seen a dramatic increase in the use of this program, including those involving offshore accounts or assets, from 1,215 disclosures in 2006-07 to close to 4,000 in 2012-13. Total unreported income for this period was \$1.77 billion, with just over \$470 million in federal taxes owing.

Whether it's a complex corporate scheme or individuals using tax havens to avoid or evade paying tax, the CRA is committed to ensuring that non-compliance is identified and addressed through education, research, international collaboration, supporting legislative change, communication, audits, and other compliance activities.

Thank you, Mr. Chair.

● (1545)

**The Chair:** Thank you very much.

I might also just say before I move to our first speaker that, given that this is an oversight committee, compliance with our rules and procedures is very important. We are very quick to lower the boom on anybody who shows up here without an action plan. I want to thank you and underscore the respect you show not only by providing it to us, but by providing it not even at the last minute, which some do. You did it in a prompt, timely fashion that allowed us to send it out to the members so they could review it. I hope everybody takes note of the right way to provide action plans to this committee, and I specifically want to thank the CRA for adhering to the detail and the spirit of that request.

Please pass that along, sir.

With that, we will now commence our rotation, beginning with Mr. Hayes.

You have the floor, sir.

**Mr. Bryan Hayes (Sault Ste. Marie, CPC):** Thank you, Mr. Chair.

Thank you for your presentations. My questions will be directed to the CRA officials.

The report states that auditing based on such extensive informant leads for offshore accounts was a new audit area for the agency and that the agency produced some new audit procedures, and that the work that has been initiated on detecting non-compliant taxpayers is promising. Can you describe some of the new procedures to the committee that resulted from your undertaking this audit?

**Mr. Richard Montroy:** Thank you, Mr. Chair, for the question.

There are a number of procedures and things that have happened in recent years that help us on the offshore front. First and foremost, on the TIEA, the Tax Information Exchange Agreements that we have, we're now up to 18. As I pointed out in my opening remarks, they all come into force after 2008, so it will still take some time to get the information.

The bottom line in the audit world: information is key. The more information you have, the easier it is to do your work. So with the 18 TIEAs that we have with the so-called tax havens, we now have the ability to go to these countries to request information, banking information usually, to help us complete our audit.

There is also, since 2007, the Liechtenstein list, and a number of other measures, be it budget 2013 that brought in the electronic funds transfer that will help us immensely starting next year. But there are also a number of other measures that have been brought in in recent years that counter the aggressive international tax flavour of transactions. To put it in layman's terms, there are a number of tax loopholes that have been closed in recent years. So I would say those are three big elements.

We've also created the new offshore tax compliance division that Ms. Jelmini leads, and that area will have the strict focus on international offshore transactions. So we've decided within the agency to create a separate group that will work specifically on those activities.

So I think all those issues put together is what helps us combat offshore tax evasion.

● (1550)

**Mr. Bryan Hayes:** Now, this next question you may have answered already, but I'm going to ask it just the same because there may be more you can add to it.

The Auditor General states that one of the goals in this audit was for the Canada Revenue Agency to learn how offshore investments were structured and how taxpayers set them up. I'm wondering if you can explain what you might have learned with that experience in terms of how these were set up and if there's something you've gained again that you can use moving forward.

**Mr. Richard Montroy:** Thank you.

Again, in 2007, this was the first time we'd ever received the list and there was very little information other than names and perhaps, on the odd occasion, a social insurance number, so we're basically starting from scratch. What we learned from the first list by looking at things is how people structure their affairs to get under the radar screen. Again to put it in layman's terms, it's what transactions they do, what countries they go through to hide their assets, whether they use intermediaries or tax professionals, and how they go about conducting the business to ensure that the money is kept offshore and that we have not identified it initially.

So I would say the Liechtenstein list helped us immensely by seeing the psyche of people trying to avoid paying tax.

**Mr. Bryan Hayes:** I have one final question. I just want to understand this whole process of informants. How does the agency receive information from informants, i.e., if I were an informant and I wanted to bring information forward, what would the process be? What would you do with that information once you received it?

**Ms. Gina Jelmini (Director, Offshore Compliance Division, Canada Revenue Agency):** We have a new offshore tax informant program that was launched on January 15, which now pays a reward for individuals who have information that leads to the collection of federal taxes owed in excess of \$100,000 that is linked to international taxes. We have also set up a 1-800 number as well as a local number that can be dialed anywhere in the world. That's the first step, making that phone call.

We explain the parameters of the program, the requirements, the eligibility criteria. Where an individual appears to meet the program requirements, they are given a case number and they're invited to provide us with a full submission. We make an assessment of the submission, and if they appear to meet again the criteria for the program, we would enter into a contract with the individual. At that point, we would do the compliance action and follow the case through the full compliance cycle.

**Mr. Bryan Hayes:** Thank you, Mr. Chair.

**The Chair:** Very good, thank you and time has expired, so perfect.

Thank you so much.

Moving along, we go to Mr. Allen.

You have the floor, sir.

**Mr. Malcolm Allen (Welland, NDP):** Thank you, Chair, and thank you to our witnesses today.

I guess my question is to Mr. Montroy.

I don't actually see it in the report so I'm not sure whether the information is available to you or not, but in the Liechtenstein example that's used in this report it talks about reassessing a total of \$24,651,000 in taxes. Do we actually collect the whole lot?

**Mr. Richard Montroy:** Thank you, Mr. Chair, for the question.

We have collected roughly I'll say \$10 million of that total. The other \$14 million is currently under appeal. So the way the rules work in the Income Tax Act is that if a taxpayer appeals or objects to an assessment we are precluded from collecting. So the amounts that

have not been collected so far are purely because the taxpayers have availed themselves of their rights to object and appeal.

**Mr. Malcolm Allen:** That leads me to the next page. Sorry, I should have referenced the page. In the English edition of page 7, now page 8, there's a great chart the Auditor General laid out that talked about the two streams of folks who voluntarily decided to come into the system and say, "Okay, I'm not going to fight here. I'm going to give the information up. If it's me, yes, okay, how do we work this through? Let's do this."

So clearly we have \$24.6 million that's assessed, \$10 million collected, \$14 million outstanding, and we decided for valid reasons—and I want to say that publicly, the CRA took the correct approach for valid reasons—we're not going to prosecute. CRA said, I want to learn how the information in the system works so I'll not prosecute. I'll go this route instead. I have to tell you that the good folks from Welland would see this as wriggling off the hook. They'd be saying to me, really, we let them wriggle off the hook and then they went ahead and appealed it.

I recognize, sir, that you don't have the choice. It wasn't your choice to appeal. It's their choice to appeal. But it seems to me that in some of the cases, should it not be that if you're letting them wriggle off the hook away from potential criminal prosecution, they ought not to be appealing what basically is a reassessment done based on money that they indeed, according to what the data you've been provided, were hiding from CRA in the first place? Is there any sense that as we go forward...? As you've laid out, you intend to do better at this because this is a learning piece and you've learned from it, and I think the report says that. Is there a piece for me to go back and tell the good folks of Welland, "Don't worry, they won't wriggle off that hook again, and then go ahead and appeal basically and drag it out with some high-priced lawyers"?"

• (1555)

**Mr. Richard Montroy:** Thank you, Mr. Chair.

As the AG's report pointed out, at the time in 2007 when we received this list we made agreements with a number of taxpayers not to prosecute in exchange for full payment, no objection appeals, etc. Again, that was done at the time because this was the first time we'd ever received this list. As I explained earlier, we didn't know the background behind it.

Since that time, I would say times have changed immensely. I referred a while ago to the TIEAs, the fact that we have a number of dedicated individuals working on this on the offshore compliance. I would say that I've been in the compliance game for a number of years now and certainly in the last few years I don't recall any deals where we have said to someone, give us the information and we won't prosecute.

The rules of the game have changed. If you are a tax evader and we can prove it, we will prosecute people to the full extent of the law. We have access to information now that we did not have six or seven years ago that will enable us to be able to prosecute if need be.

**Mr. Malcolm Allen:** I appreciate the response because when folks ask me at home about these sorts of things, one of the things they want to know is.... “When I owe my taxes, I have to pay it because I don't have the luxury of an offshore tax account, and for those who do, if it looks like they're wriggling their way.” Clearly folks get annoyed.

My last question would be about something in your chart on page 7, where it says reassessed was \$15,951,000 and resolved was \$1.4 million.

I'm sure, Madam McMahon, you can explain to me exactly what those numbers mean. I think I know what it means, but it would be helpful if I actually was told out loud. It's on page 8 of the English of the Auditor General's report.

**Ms. Marian McMahon:** Yes. We indicated for resolved that they were either reassessed down to zero or were paid, and the \$14.5 million, as Mr. Montroy said, is still in appeals and not collected.

**The Chair:** Sorry, Malcolm, we're well over time.

**Mr. Malcolm Allen:** I thought that's what it was, but thanks for telling me.

**The Chair:** Okay, great. Thank you so much.

Moving along, Mr. Aspin, you have the floor, sir.

**Mr. Jay Aspin (Nipissing—Timiskaming, CPC):** Thanks, Chair.

Welcome to our guests. Thanks for helping us understand the wonderful world of offshore banking.

You've indicated in your submission that, “To oversee the implementation of these new measures, the CRA has established the offshore compliance division, which is a dedicated team that will be composed of 70 CRA employees”.

Have you in the last little while, when you've established these new programs and populate them with employees, ever done any cost-benefit analysis as to what it costs versus what they discover or bring in, in terms of revenue?

• (1600)

**Mr. Richard Montroy:** Thank you, Mr. Chair.

I would say that it's pretty standard practice in the compliance world to always examine the cost-benefit ratio. We have all sorts of statistics in the agency that show that, if you invest one dollar in a certain field, you get a rate of return that depends on whether the area is in a small, medium, international, or large file. Certainly in the offshore area, the rate of return is fairly significant. We're usually talking of—and I'm using ballpark figures here because it depends—a rate of return of 8:1 or 10:1, easily.

The difficulty in these areas is that a lot of these structures that are set up are very complicated, and if we do end up reassessing and going to court, it takes a substantial amount of time to work the file, to litigate it, so that obviously cuts into our cost-benefit. But for the most part, in the offshore world, it's money well spent.

**Mr. Jay Aspin:** Thank you.

You concluded that CRA was diligent in its approach and benefits from the intelligence that you gathered during the Liechtenstein investigation. This government has continued to build on this

success and has introduced a slew of measures to strengthen the CRA's investigative abilities, which you outlined in your submission.

Based on your review of the Liechtenstein project, do you feel the measures introduced in the last budget economic action plan 2013, the one before the one we just released, will improve this likelihood?

**Mr. Richard Montroy:** Thank you, Mr. Chair.

Budget 2013 included a number of measures that will help us in the fight against offshore tax evasion. I referred to a few of them in the opening statement such as the offshore informant tax program, and the electronic funds transfers that we are currently working on to set up a system to be able to receive the information starting January 1, 2015. There are a number of other measures such as streamlining the process to get unnamed person requirements to go to court once as opposed to twice before, and the T1135, which is a form for offshore holdings. Attached to that was the fact that anybody who doesn't do what they're supposed to, fills out the form incorrectly, or does certain things, the legislation extended the period of time for us to uncover and audit these measures. So budget 2013 had a number of very important, significant measures for us on the offshore front.

As I also alluded to a while ago, there was also a number of tax loopholes that were closed that are very important. But again I also have to mention the negotiation of TIEAs that started as far back as mid-2000. The TIEAs are a very important factor in the fight against tax evasion and offshore aggressive tax planning because the more tools we have, the more it gets out there that taxpayers have fewer ways to hide the information. That is why the voluntary disclosures continue to go up, because there are more and more measures that assist us to uncover offshore holdings.

**The Chair:** Perfect, thank you so much.

**Mr. Jay Aspin:** Thank you.

**The Chair:** Monsieur Giguère, you have the floor, sir.

[Translation]

**Mr. Alain Giguère (Marc-Aurèle-Fortin, NDP):** I would like to thank the witnesses very much for being here.

My first question is for the agency or the Office of the Auditor General, as you wish.

On page 12 there is a table summarizing the terms of the agreement. There is no mention of the obligation to arrest the individual or professional who planned the tax evasion. Am I wrong?

**Mr. Richard Montroy:** The Liechtenstein bank list did not have much on those who promote tax evasion. However, it is something we see quite often these days. Fairly harsh penalties are provided for third parties who cooperate in setting up this kind of structure. I do not have the numbers in front of me, but these sanctions are used often and are quite severe.

•(1605)

**Mr. Alain Giguère:** I am surprised to hear that because in May 2013, in his report on tax fraud, Mr. James Rajotte, the MP for Edmonton—Leduc, indicated that penalties were not imposed on professionals who participated in that kind of tax evasion. Is it possible that something major has happened since 2013?

The government referred to that document when writing its last budget, and the response from your institution contains five points. However, in those five points, nowhere is it specifically indicated which penalties will be imposed on professionals or financial institutions who actively participate in the planning of tax fraud.

I would like to know where the truth is. Is it with your officials who appeared before the Standing Committee on Finance, which is chaired by Mr. Rajotte, or in the information that you are giving us today?

**Mr. Richard Montroy:** I do not have Mr. Rajotte's report in front of me, but I can say that the sections of the Income Tax Act that set out penalties for third parties have been in existence for several years. It is possible that Mr. Rajotte said that it was fairly difficult—let us admit it—to prove that financial institutions, for example, directly participated in a fraud or helped taxpayers commit fraud.

I can also assure you that we regularly impose penalties on people who help others implement a strategy to avoid paying income tax. The penalties imposed on third parties are similar to those concerning tax havens. This is something that we apply fairly regularly.

**Mr. Alain Giguère:** You have referred to strawmen. However, in Canada, lawyers and accountants have the advantage of professional privilege. As a tax lawyer, I can tell you that at the Canada Revenue Agency, professional privilege is respected. The only way to break it is to force the taxpayer who is part of an agreement to expose their own lawyer or accountant. However, I have not seen anything about this in your documents.

**Mr. Richard Montroy:** I am also a lawyer, so I am very familiar with professional privilege.

If we suspect that something is not entirely aboveboard, we have several means at our disposal to collect information. I spoke about information exchanges with other countries, but as of next year, we will also have access to financial information. We are no longer limited to information protected by professional privilege. We have other means to obtain the information.

**Mr. Alain Giguère:** All right.

Could you give us an idea of how big the loss is? It is certainly difficult to establish an exact figure, but how much does your agency lose because of tax evasion?

**Mr. Richard Montroy:** That is a very good question which is often highlighted in the media. The problem is trying to calculate tax evasion and determine how much money the government is not taking in because of tax evasion.

It is quite hard to be able to say with certainty what we do not know. I would say that a large majority of OECD countries do not calculate the tax gap. Very few countries analyze the tax gap

because, indeed, its true nature is not known, which makes it difficult to calculate or evaluate.

As such, our agency and agencies in most other OECD countries have taken another approach. Instead of undertaking a study that could be completely theoretical, we use our resources to do research on the ground and also to invest in tools that could help us recover this money.

•(1610)

**The Chair:** Thank you very much.

[*English*]

Time has expired. Thank you both.

We'll move over to Mr. Woodworth. You have the floor, sir.

[*Translation*]

**Mr. Stephen Woodworth (Kitchener Centre, CPC):** Thank you very much, Mr. Chair.

I would like to thank the witnesses for what they have presented here before us today.

[*English*]

I would like to focus my questions on paragraphs 9.24 to 9.29 of the audit. I will address most of my questions to Ms. McMahon, if that's all right. I'd like to begin by requesting a bit of clarification with respect to paragraph 9.27 where there is reference to two matters being referred to the criminal investigations division. I have the idea that the criminal investigations division is not part of CRA but is part of the justice department. I'm not sure about that and wondered, Ms. McMahon, if you can tell me where the criminal investigations division is situated.

**Ms. Marian McMahon:** It is situated in Surrey. It is a division within the agency.

**Mr. Stephen Woodworth:** Did you conduct an audit of the criminal investigations division?

**Ms. Marian McMahon:** No, we state in our chapter that we only looked at the division under Mr. Montroy's responsibility. We did note that two were forwarded to this division, but we did not look at the decision made by that division on those two cases.

**Mr. Stephen Woodworth:** That's what I was interested in, thank you. Your audit was limited to the division that Mr. Montroy heads. What is the name of that division? Mr. Montroy can tell us if you can't.

**Mr. Richard Montroy:** Sorry, Mr. Chair. I think I need to clarify that the criminal investigations directorate does report to me as well. It's one of six directorates that report to me, but the branch is the compliance programs branch.

**Mr. Stephen Woodworth:** What I'm trying to get at is the scope of the audit. It did not include the criminal investigations division, but it did include the compliance reporting directorate. Is that the term?

**Mr. Richard Montroy:** Yes, the audit area.

**Mr. Stephen Woodworth:** The audit area, okay.



I'm asking about that because I think there may be different purposes involved in each division. Would that be your understanding, Ms. McMahon?

**Ms. Marian McMahon:** Yes, and we do mention that there are different objectives, as we described in paragraphs 24 and 25. So we did look at the audit division for those files that they did make referrals on, and then we looked at the other six where they did not make referrals to see if they were consistent in applying their decisions to forward it or not.

**Mr. Stephen Woodworth:** What did your audit lead you to conclude would be the objective of the division that you did audit, the audit division, if I could put it that way?

**Ms. Marian McMahon:** For the eight cases?

**Mr. Stephen Woodworth:** Pardon me, I'm not referring to specific cases, but I want to clarify the distinction between these two directorates. Am I right that they would each have different objectives? I think you said yes. What would you have considered to be the objective of the unit that you did audit, and what objective were you measuring against in your audit?

**Ms. Marian McMahon:** What we looked at was, as mentioned in....

If the file had an agreement in place, then it wasn't to be referred to that division at all. So for those, that was the first—

**Mr. Stephen Woodworth:** I'm sure I'm not asking my question correctly, because I don't seem to be getting it across. What do you consider to be the objective of the division that you were auditing?

**Ms. Marian McMahon:** To assess taxes where warranted.

**Mr. Stephen Woodworth:** Okay. Everything it does, therefore, is obviously to be directed to that objective, right? I just want to know I'm on the right track in understanding your report.

• (1615)

**Ms. Marian McMahon:** Yes.

**Mr. Stephen Woodworth:** For example, you say in paragraph 9.28 that "the agreement served a purpose for the Liechtenstein list audits". Can you articulate for me what purpose it was that the agreements were serving?

**Ms. Marian McMahon:** As mentioned in the previous paragraph, because this was the first time the agency had received this type of information, there was a choice being made on whether to acquire information through this agreement to learn about how some of these structures were set up or to acquire their information to continue with assessing further files.

**The Chair:** Sorry, sir, your time has expired.

**Mr. Stephen Woodworth:** I'm already out of time.

Thank you.

**The Chair:** Very good. Thank you.

Before I turn it over to Mr. Simms, I'd like to bring it to the attention of members that although Mr. Simms has been with us for a short time, a powerful time, he is actually now moving on to another committee. Ms. Jones will be our new permanent member. As a result of the scheduling, Mr. Simms is actually here as a substitution today.

I want to take this opportunity, on behalf of all members of the committee, to thank you for your time here. Your positive contribution has been much appreciated. Thank you, sir, for your time here.

You now have the floor.

**Mr. Scott Simms (Bonavista—Gander—Grand Falls—Windsor, Lib.):** Thank you very much, Chair. You're very kind. My time was short, but it certainly was a good time. Thank you.

I still hope, by the way, that you carry on to Newfoundland, on the island, this summer to do that.

**Mr. Dan Albas (Okanagan—Coquihalla, CPC):** He's expecting it.

**Mr. Scott Simms:** That's right. Well, you have another Newfoundland—sorry, Labradorian—so there you go.

I want to go back to this exchange that took place here. I'm not quite clear about the criminal investigation part of it whatsoever. It's not so much the division and how this works, but it seems to me, if I can quote here, that there were valid reasons for six of the cases:

...there were valid reasons that led to the conclusion that no referral would be made, in accordance with Agency procedures.

Of the eight files, "the Division did not accept either for further investigation." Why was this the case?

Is it because of the system we have that we couldn't do that? Or did you feel that in these particular cases it just wasn't necessary?

**Mr. Richard Montroy:** Thank you, Mr. Chair, for the question.

On the criminal investigation front, in the courts, you have to prove something beyond a reasonable doubt. That's as opposed to the work we do in the audit world, which is civil assessments. You raise an assessment based on the preponderance of evidence. The people on the criminal investigation front have to look at whether there's enough evidence to support a prosecution. If that's the case, then it goes to public prosecutions, PPSC, to carry the ball from that point.

In the few cases we saw here in Liechtenstein, there was not enough evidence to support the laying of charges. That's because there was so little information on file, we were not able to pursue.

**Mr. Scott Simms:** So this was because of the particular cases. It wasn't because the tools in the toolbox we had prevented us from doing as such.

**Mr. Richard Montroy:** That's correct.

**Mr. Scott Simms:** That being said, though, with these new tax agreements, let me ask about jurisdictions, in particular foreign jurisdictions. I'll read out paragraph 9.35. It says:

Information requirements about unnamed persons.... The Agency has begun issuing these notices to foreign banks operating in Canada, but there are challenges to getting information about offshore investments. Foreign jurisdictions do not have to respond to these types of requests.

That's even though they have an entity within this country?

**Mr. Richard Montroy:** Thank you, Mr. Chair.

The whole area of information holding is very complicated. It's an excellent question, because it's something we're faced with often. If the information is held in a bank in another country, we cannot use the Income Tax Act, an unnamed person requirement, to force them to give us information. Clearly they're not residents of Canada.

This is why the TIEAs are important. We can use the TIEAs to go to the Cayman Islands of the world, the Bermudas, the Bahamas, and get their tax administrations to get the information from the local financial institution.

**Mr. Scott Simms:** So you're saying that for those countries that we do not have associated TIEAs we could be in a situation where our investigators are absolutely frozen. If they're holding an account, despite the financial institution's presence here, if they are headquartered somewhere else in the world, then obviously we can't do that.

• (1620)

**Mr. Richard Montroy:** This is a subject that's near and dear to my heart because I was one of the people who negotiated the first five TIEAs. The Canadian government took a step back and looked at what countries are of most interest to Canada. Since that time we prioritized the various countries, which is why you see TIEAs with Bahamas, Bermuda, Jersey, Guernsey, the British Virgin Islands, etc. B.V.I. has not come into force yet, but we've come to an agreement with them. Those are the countries that we typically see Canadians investing in.

**Mr. Scott Simms:** I'm going to switch gears again as I only have a few seconds left. I just want to talk about 9.40, which states, "Up-to-date guidance would be useful for auditors. As of the end of our audit, the wiki page"—as it's called, for information that was gathered during the process with Liechtenstein—"was not developed enough to be helpful."

Even today, is that correct?

**Mr. Richard Montroy:** Yes.

Go ahead.

**Ms. Gina Jelmini:** We're in the process of developing the wiki page and it will be used by the offshore compliance specialized teams when they're implemented fully in April. So we are developing it now and we're progressing well on it.

**The Chair:** That's it.

Very good; perfect timing—we're doing well, colleagues.

Mr. Falk, you have the floor, sir.

**Mr. Ted Falk (Provencher, CPC):** Thank you, Mr. Chairman.

For years I've tried to figure out how CRA thinks and I'm not sure if I'm more confused today or clarified, but I see with your speaking notes I have to start at the back and go forward. I'm a little bit confused still.

My question is around the 2013 economic action plan, which contained measures for financial institutions to provide new information on international wire transfers of \$10,000 or more. If I heard correctly, you're not analyzing that data yet?

**Mr. Richard Montroy:** The legislation only comes into effect January 1, 2015. Right now we're in the process of building the

system so that when January 1, 2015 comes along and financial institutions start sending us the information, we will have the systems in place to be able to analyze the information and act on it. As it stands now the legislation doesn't come into effect until 2015.

**Mr. Ted Falk:** I think financial institutions have been complying with FINTRAC for probably two or three years already in that regard.

**Mr. Richard Montroy:** Yes.

**Mr. Ted Falk:** Do you plan to retroactively analyze that data?

**Mr. Richard Montroy:** I would say that at this point we already receive some information from FINTRAC. There's a whole bunch of rules that are in place to analyze certain transactions. So when FINTRAC suspects money laundering and tax evasion, they have the capacity now to provide us with some information. I would say for the most part we already get referrals from FINTRAC on the most egregious cases. What this new legislation will allow us to do is cast the net wider to look at all transactions and not just the most egregious cases.

**Mr. Ted Falk:** Thank you for that.

Your informant program, is that legislation also only being enacted in 2015?

**Mr. Richard Montroy:** The informant legislation is not legislation; it's a program. The Minister of National Revenue launched the program in January of this year and since that time, as Ms. Jelmini mentioned a few minutes earlier, we have already started receiving phone calls from various informants.

**Mr. Ted Falk:** I see from your report that the fees people can expect from being an informant range between 5% and 15%. Is that based on how well they negotiate or is there a schedule?

**Mr. Richard Montroy:** The 5% to 15% is based on the quality of the information we receive and a number of other factors. We're also relying on best practices of other countries because there are a few other countries out there that also have paid informants programs. We based our program on the best practices of the other countries.

**Mr. Ted Falk:** In the Liechtenstein cases were the taxpayers primarily individuals or corporations?

**Mr. Richard Montroy:** There was a mixture of both. There were individuals. There were trusts. There was a mixture of entities.

• (1625)

**Mr. Ted Falk:** Do I still have...?

**The Chair:** You have a minute and a half.

**Mr. Ted Falk:** The auditor's report also states that the current audit guide for offshore banking is from 2001. Are the audit guidelines being updated with today's banking situation? Maybe they have been already.

**Mr. Richard Montroy:** Thank you for the question, Mr. Chair.

We have done a number of things. Ms. Jelmini talked about the wiki page, but we also sent instructions in January of this year to the people who are going to be working on the offshore front, talking about a number of measures: the time it takes to do an audit, the information you are supposed to look at, basically a road map of what they should do. That went out in January of this year.

**Mr. Ted Falk:** They are constantly being updated.

**Mr. Richard Montroy:** Yes.

**Mr. Ted Falk:** Great.

The audit also notes that you assess penalties on a case-by-case basis. Has that been effective?

**Mr. Richard Montroy:** Penalties are always a very good deterrent, and the reason we say it's always on a case-by-case basis is that no two situations are identical. So we've always had a practice at the agency that we do not levy penalties unless we look at the facts of the situation.

**Mr. Ted Falk:** Have I time for one quick question?

**The Chair:** A brief question.

**Mr. Ted Falk:** On that 5% to 15% for informants, it says on taxes. Is that on taxes, interest, and penalties or just taxes?

**Mr. Richard Montroy:** It's on taxes assessed and collected.

**Mr. Ted Falk:** Thank you, Mr. Chairman.

**The Chair:** You're much better. I used to do that all the time. Just a little question, and I'd be going on and on. I really appreciate your respecting that, thank you.

Moving along, back over to Monsieur Giguère. You have the floor, sir.

[*Translation*]

**Mr. Alain Giguère:** Thank you, Mr. Chair.

The government has decided to offer compensation. In the first instance, that of Liechtenstein, you have, in a manner of speaking, obtained information that was not even needed. It was sent to you on a silver platter. You know that informers have privileged information and you are ready to pay them, but are you proactive? Do you communicate with representatives of foreign financial institutions to talk about these people who deal with them and who invest millions of dollars with them? Do you tell them that accountants and IT operators can also get a few million dollars? Are you proactive? Do you try to speak to people who have information to incite them to become informers?

**Mr. Richard Montroy:** Thank you for the question.

At the current time we are not working proactively in this way because the program has just started. Several people have already called and submitted information. It is fairly difficult for the agency to do what I would call marketing to financial institutions, because that could be seen as being an incitement to possibly commit a criminal offence. For the moment, we are not working proactively in this way.

**Mr. Alain Giguère:** Mr. Chair, I appreciate the response, but it leads me to ask a question on the established procedure.

The Auditor General did a draft of this procedure. Does it seem to you to be relatively quick, and does it give good results? Given the importance of the information that was sent to them, in your opinion, is the result acceptable? We have identified a number of fraudsters, we have identified the amount of money defrauded, and we have recovered some of the money from these frauds. Does that seem acceptable to you? Should there be improvements made in this area?

**Ms. Marian McMahon:** I do not fully understand the question on our chapter. We audited the Liechtenstein list only in the context of laws that were in force at that time.

[*English*]

**Mr. Alain Giguère:** You make a verification of the work of the agency.

• (1630)

[*Translation*]

**Ms. Marian McMahon:** Yes, we started the activities with the help of the list. There has been an improvement since 2007. The work seems to be giving good results, but this is not an evaluation.

**Mr. Alain Giguère:** The Canada Revenue Agency indicated to the Standing Committee on Finance, which was holding hearings on tax fraud and the use of tax havens—

[*English*]

**Mr. Bryan Hayes:** I have a point of order, Mr. Chair.

**The Chair:** Mr. Hayes, on a point of order...

**Mr. Bryan Hayes:** I'm getting confused. This committee has nothing to do with the finance committee. We don't know what happened at the finance committee and what didn't. This seems to be straying outside of the purview of this particular audit.

**The Chair:** I hear your point and I share your thought, but I'm not convinced that Mr. Giguère is making the points that he's trying to make.

I've noted the issue, and unless and until Mr. Giguère is asking an unfair question of someone who doesn't have that report in front of them, I'm allowing Mr. Giguère some latitude to make his comments, as I do with all members. At the point at which it starts to be unfair—if he did make a reference in a question to a document that the witnesses don't have—then I would have to pull that back.

For now, I don't think he's gone beyond the latitude that is given to a member to make his statements. When it comes to the questions, though, they need to be fair, and not having information in front of them is not fair. I would deal with that accordingly.

Mr. Albas.

**Mr. Dan Albas:** I have a question on that, and I won't belabour the point.

The transcripts of this committee go toward our process of a report back to the House. If a member does seem to stray off the subject matter considerably, I would hope that the analyst would be looking at that and seeing what's pertinent to the actual reporting process. I'm hopeful that is the standard case.

**The Chair:** I would expect that the analysts will continue to use the excellent discretion that they've been using.

I think that your time on this committee has shown that the statement is not over the top. I would also point out, of course, that it takes a majority of the committee to approve something in the final committee report. There's a double safeguard, if you will, from concerns.

We will stop the clock here for a moment.

I think your concern is with somebody having the ability to say something and skew the report when the statement didn't have any factual basis, in your opinion, in where we are, or relevancy.

Your point is well taken. However, we do need to buttress that against the right of members, particularly at committee, to have that wide latitude. I know you support that because I've given you that latitude. I do think we have the checks and balances, but it's always worth underscoring these things.

Thank you for your point. Are there any further interventions?

Hearing none, please start the clock.

Mr. Giguère, you have the floor again.

[Translation]

**Mr. Alain Giguère:** I will share with you some public information that you are familiar with. Since 2006 and following the audit of 8,000 tax evasion files, the Canada Revenue Agency has identified and recovered 4.6 billion dollars. Can we expect to see growth in the amount of tax recovered? Is this a cruising speed that you intend to maintain? Do you feel that you still have a lot of work to do in this area? The recent budget from the Conservative government included a five-point plan to improve this performance. Will the five points in this plan be enough to improve your performance?

**Mr. Richard Montroy:** That is an excellent question.

Indeed, I often discuss results with my boss. Results vary from year to year according to the economic situation and the context. The 2013 budget, which I referred to earlier, has closed several tax loopholes. As the person in charge of audits, I am very happy that the government has adopted these clauses which close these tax loopholes, but this will have an influence on our results. Certain audits that we did in the past gave results, but we no longer do them since the tax loopholes have been closed. However, because I am a fatalist by nature, I have no doubt that certain taxpayers will be able to find other ways to commit tax evasion.

When a government closes one door, professionals in the field find a way to open another. This is a game that is played in every country.

• (1635)

[English]

**The Chair:** Thank you. The time has expired.

Moving along, Mr. Chisu, you have the floor, sir.

**Mr. Corneliu Chisu (Pickering—Scarborough East, CPC):** Thank you very much, Mr. Chair.

Thank you very much to the witnesses for appearing before this committee.

Being an engineer, I am humbled by and am enjoying this wonderful experience of being between lawyers and accountants.

**Voices:** Oh, oh!

**Mr. Corneliu Chisu:** I have a question for Ms. McMahon of the Auditor General's office.

International tax evasion is a very serious issue that was largely ignored in the past by successive Liberal governments. As a result, the Liechtenstein case was one of the first major compliance projects of its kind. Despite this, in general the opposition has been highly critical of the results of this investigation. In your report, you recognize that due diligence was done when deciding which files to pursue. Can you elaborate on this, please?

**Ms. Marian McMahon:** Thank you, Mr. Chair.

In our chapter, we start out in paragraphs 9.8 through 9.11 to identify that we reviewed CRA's actions in taking the names on the list and determining which ones to audit and which taxpayers not to audit. They do have procedures to follow to ascertain which ones to follow through on, and we had no concerns. As we state, sufficient work was done to justify the decision on which taxpayers to continue auditing and which ones the agency decided not to audit.

**Mr. Corneliu Chisu:** Thank you very much. I will follow that up with the following question.

Based on your report, I think it's fair to say that the CRA handled the project quite well. You mentioned in your report that this project was relatively uncharted territory for the CRA when it began, yet it's no secret that offshore tax evasion has been around for a very long time. Can you comment on what the CRA's approach to offshore tax evasion was prior to 2006, and why something like this was never done prior to that time?

**Ms. Marian McMahon:** I will start answering and will probably recommend that the agency continue with the answer.

In this audit, we looked at how the agency managed the Liechtenstein list only. We did note that it was the first time that they had received such extensive information in this manner, but we concentrated our efforts on only what they did with this list starting in 2007. For anything done prior to that, I would defer to the agency.

**Mr. Richard Montroy:** Mr. Chair, thank you for the question.

Actually, that is a very good point about what happened in the past. I would have to say that it's easy today, in 2014, to say that this happened and that happened, but if you take a step back.... I was lucky enough to be one of Canada's representatives on the Forum on Harmful Tax Practices, where we looked at what so-called tax havens did and at countries involved in bank secrecy.

It's no secret that Switzerland was one of those countries. I would say that in the mid-2000s, when I was a member of the Forum on Harmful Tax Practices, I never thought for a million years that I would see Switzerland sign an amended treaty with Canada for article 26, which is the exchange of information. Also, a year or two years ago, whatever the case may be, Canada signed a new treaty with Switzerland that includes the OECD standard for article 26, and we now exchange banking information with Switzerland.

Things have changed dramatically in the last few years, and I think they will continue to change dramatically. The ex-head of the OECD, Mr. Owens, said that for a lot of the stuff that the OECD and the treaty partners were doing, their ultimate goal was to ensure that nobody has room to hide money anywhere in the world. I think the OECD and its member countries have done a very good job in a relatively short period of time.

• (1640)

**The Chair:** You have just a couple of seconds, sir.

**Mr. Corneliu Chisu:** Thank you very much.

Do you have any lessons learned from this Liechtenstein file, if you can tell us?

**Mr. Richard Montroy:** Yes, thank you, Mr. Chair.

The lessons learned—I talked a bit about it earlier—is that we now know how certain structures are set up. To put it in layman's terms, we know now where to look. It's as simple as that, and that helped us a lot in 2007 to get access to that information. We use it every day on other things.

**The Chair:** Very good. Thank you so much.

Thank you, Mr. Chisu.

Moving on, Mr. Simms, you have the floor again, sir.

**Mr. Scott Simms:** Way to go, Mr. Chisu, patting yourself on the back for the developments of other countries such as Switzerland. There you go. We've continued in that mode.

You said you worked five agreements. Were they the original five of the TIEA agreements?

**Mr. Richard Montroy:** Yes, sir. The original five, yes.

**Mr. Scott Simms:** Interesting, so you have quite a bit of experience in this.

Dealing with other countries, such as Switzerland, what do you find is the biggest change in dealing with this? First of all, what have been the biggest advances, and second of all, what continues to be the biggest frustration?

**Mr. Richard Montroy:** Thank you, Mr. Chair.

I would say the biggest change is that there are a number of countries...and I'll use one as an example, the Isle of Man, which was one of the first five countries that Canada negotiated with. The Isle of Man was considered a tax haven and they truly wanted to change the way they were seen in the international community. There are a number of countries, the Isle of Man is one of many, that have wanted to legitimize their economies and wanted to be seen well in the international community.

I would say over the last five years or so, that is probably the biggest thing, that a number of countries have stepped to the front and genuinely want to change the way things work.

The biggest challenge, I would say, Mr. Chair, is that taxpayers and their advisers continue to use every way to impede giving the CRA access to information. So we do spend a lot of time and resources going to court, trying to force institutions and entities to give us the information. It's a very slow process, so I've learned in

my job to be very patient. It's a long game, but we now have the tools in place to deal with those issues.

**Mr. Scott Simms:** I noticed the proliferation of larger banks around the world, certainly in the past 10 years. Is that an impediment as well for people to hide assets around some of the bigger institutions, or does that help?

**Mr. Richard Montroy:** Thank you, Mr. Chair.

I don't think the proliferation of banks really has that big an impact on this issue. It's more the tax intermediaries or the advisers who try to find ways to hide money in various places.

**Mr. Scott Simms:** In doing the exercise you went through with Liechtenstein, one of the things was timelines. It seems to me that one of the situations....

I'll ask Ms. McMahan. You talk about the timelines and talk about how it has to be delivered in a timely manner, but it seemed during the Liechtenstein experience the timelines were not as defined, per se, for the particular auditors. In doing that, was that an open-ended thing? Were there some areas where timelines were good, but in general, was it too open-ended?

• (1645)

**Ms. Marian McMahon:** As we state, there was no definition for the timelines. There were no standards established for this project, so that's what we had indicated in paragraph 15. Then we indicated in paragraph 16 that, yes, having the standards would be important, so we encourage the agency to set—

**Mr. Scott Simms:** I'm assuming this can be responded to by Ms. Jelmini.

**Ms. Gina Jelmini:** Yes, we've established timelines and they've been communicated to the offshore compliance specialized teams.

**Mr. Scott Simms:** This is for all new areas, your TIEA agreements and so on and so forth, and you have a pretty standardized practice.

**Ms. Gina Jelmini:** That's correct.

**Mr. Scott Simms:** How does that go? Guidelines like the wiki...?

**Ms. Gina Jelmini:** There are a number of them. The wiki is part of the guidelines, but we've sent a package including a number of information areas, one of which is the wiki, and the timelines have been included, as well.

**Mr. Scott Simms:** That seems to be quite key here to helping out future auditors as they go through this. Is that correct for CRA, anyway?

**Ms. Gina Jelmini:** Yes, we're providing as many tools as we can to help them.

**Mr. Scott Simms:** I have a final quick question. The commission that's offered to people who are informants is 5% to 15%, is that correct?

**Ms. Gina Jelmini:** That's correct.

**Mr. Scott Simms:** Is that taxable?

**Ms. Gina Jelmini:** Yes it is.

**Mr. Scott Simms:** I have to go out on a high note, sir.

**Voices:** Oh, oh!

**The Chair:** You can't pick a better note to take your bow out from this committee.

Thank you so much, Mr. Simms.

Now going back to Mr. Albas, you have the floor, sir.

**Mr. Dan Albas:** Thank you, Mr. Chair.

I just want to thank all of our witnesses here today. Specifically I'm going to direct my first question to Assistant Auditor General McMahon and perhaps Director Miller, whoever can best answer.

First of all, I understand through the report that there were some legitimate concerns raised about priority-setting at the onset of the list becoming known and also about some aspects of it. Some of the criticism I have heard from the opposition is that CRA didn't treat this kind of behaviour with the seriousness...or had properly committed to resourcing.

When I read through this, particularly since the development of such a substantive list had never been seen before, I don't think this kind of audit has actually been undertaken by a previous government. Would you agree that CRA did take this most seriously and diligently set out to see this through?

**Ms. Marian McMahon:** We did conclude that the agency conducted the compliance actions adequately and they followed their own procedures. In our recommendations, however, we do identify some areas for improvement such as setting timelines, updating their procedures, and training their staff.

I don't know if Heather wants to add anything more on our conclusion, but that's what we looked at to see if they were following their own procedures and taking those lessons learned and updating their procedures for future lists.

**Mr. Dan Albas:** Director Jelmini, you mentioned to Mr. Simms that those timelines are now being done if a similar occasion or similar occurrence was to happen. Is that correct?

**Ms. Gina Jelmini:** That's correct. The timelines have been changed.

**Mr. Dan Albas:** Mr. Montroy, your correct title is assistant commissioner, correct?

**Mr. Richard Montroy:** Yes.

**Mr. Dan Albas:** Well, it's nice to have you here today, sir.

It's my understanding you were involved in some of these TIEAs, tax information exchange agreements. When this list first materialized, did we have a TIEA with Liechtenstein?

**Mr. Richard Montroy:** Thank you, Mr. Chair.

The TIEA with Liechtenstein was just recently signed. In fact, in 2007, when we received the Liechtenstein list, there were no TIEAs signed at that point.

**Mr. Dan Albas:** The environment has changed radically. I guess, Mr. Chair, what I'm saying is that by going through this process particularly when you're dealing with international operations, it can be very difficult if you only can see one side of the equation. So having these TIEAs, I imagine, Mr. Montroy, will make the work of CRA more efficient and more focused. Is that correct?

**Mr. Richard Montroy:** Yes, that is correct.

**Mr. Dan Albas:** One thing I wanted to raise, Mr. Chair, is that from reading the report, and I give all credit to the Auditor General that it really reaffirms the fact in my mind, the old sentiment, that there are only two things you can count on in life, death and taxes—obviously, focusing more on the tax side. It just seemed to me that the particular lead—I'm going to call it a lead—that you received from this informant was absolutely critical to this whole process being opened up. Is that correct?

• (1650)

**Mr. Richard Montroy:** At that time, yes, that is correct.

**Mr. Dan Albas:** When Assistant Auditor General McMahon opened up her statement, she said other lists had been received since then. Is that correct? I'm not sure if it's the same quality or scope, but other lists similar to this may have come forward. Is that correct?

**Mr. Richard Montroy:** That is correct. We work with our treaty partners. We have actually quite an extensive network of countries that we work with. So yes, we occasionally get lists from our treaty partners.

**Mr. Dan Albas:** I think it's particularly important because most people are familiar with the idea of an informant and how important that is to cases like these. I think it's important for us to encourage people who may have similar information to come forward.

Director Jelmini, your suggestion that there are ways for people to get in touch I think is important, but in the Auditor General's report it talks about something called "informer privilege".

Can either one of you just comment on what that is? I think it's important, Mr. Chair, that people at home who may be engaging in this kind of evasion or aggressive avoidance know that there are protections and not just incentives, which Mr. Simms had mentioned earlier. There are protections that can be offered for people when they bring forward information. What's important to CRA is the functioning.

**The Chair:** Give a brief answer, please.

**Mr. Richard Montroy:** Thank you, Mr. Chair.

Briefly, in our tax informant program we have a number of measures in place to protect the confidentiality. It's pretty much a well-established principle in international law that you try to protect the identity of the informant for security reasons, so we have measures in place to protect the identity of the informant.

**Mr. Dan Albas:** Yes, thank you.

**The Chair:** Very good, thank you.

Moving right along, Monsieur Giguère, you have the floor once again, sir.

[*Translation*]

**Mr. Alain Giguère:** For the benefit of the public, I would like to come back to the last bit of information presented by Mr. Albas.

Tax avoidance by way of abusive tax planning is not illegal; tax evasion is. Tax planning, even if it is very abusive, which then leads to tax avoidance, is legal. That is why you cannot prosecute a person for tax avoidance. What the law does not prohibit is permitted. Therefore, the information presented by Mr. Albas was not appropriate. That can be confirmed by Revenue Canada or the Office of the Auditor General.

My question is about the lists. I would like to know what is the evidentiary value or weight of evidence produced by a whistleblower. A list can very well contain all kinds of numbered data, but how would the agency alone be able to give enough evidentiary weight to the list so that it may lead to an assessment and a penalty, including the payment of interest, as the case may be?

**Mr. Richard Montroy:** In cases of straightforward civil assessments, it's the balance of evidence which applies. In that situation, there are several ways we can use to get the information we need. There would be information in the country, banking information which can be obtained in Canada and, if necessary, under tax conventions with other countries.

However, the situation is very different in the case of tax avoidance. You have to prove that beyond a reasonable doubt, and that is much more difficult. The balance of evidence would then become much more significant. Furthermore, under Canadian law, people have the right to protection. In cases where we would want to force a taxpayer to provide us with information, our power changes drastically in cases of tax avoidance. There would be criminal consequences, as opposed to just having a civil assessment.

**Mr. Alain Giguère:** There are no criminal charges in cases of tax avoidance. The Supreme Court ruled on that matter. A person taking legal measures so as to pay less tax is not committing a crime.

**Mr. Richard Montroy:** If I may, I will answer that question in English. I apologize, but it is because I mostly work in English.

[English]

There's a difference between tax evasion and tax avoidance. Tax avoidance is perfectly legal, and as the honourable member mentioned a few minutes ago, what is not prohibited is permitted. Tax avoidance is something that we see often. It is playing on the margins of the law, but it is permitted. Tax evasion is a very different story and it is criminal in nature.

• (1655)

[Translation]

**Mr. Alain Giguère:** That's exactly what I said.

As for the evidence, if you are given a list of names, but the list was stolen from a foreign banking institution, do you have the right to use the list? In Liechtenstein, the employees from the bank were prosecuted. In fact, they are still being prosecuted in Europe. They are even wanted by INTERPOL.

Do you have any measures which would protect your witnesses, who might even be considered as being political refugees?

**Mr. Richard Montroy:** The question as to whether we can use stolen information is really quite relevant. In English, I would call that

[English]

“the fruit of the poison tree”.

[Translation]

I cannot answer that question today as far as Canada is concerned, because we still have not dealt with that type of situation. However, our legal advisors have confirmed that we can indeed use the information. To follow up on what you said earlier, I would like to add that in France, a court of first instance ruled that the government did not have the right to use the information. However, the decision was reversed on appeal. Therefore, under French law, the government is now allowed to use stolen information.

[English]

**The Chair:** That's it, we're on the money, right on the dime.

Okay, for our last question, we'll go over to Mr. Hayes.

**Mr. Bryan Hayes:** I don't think so. I could take one—

**The Chair:** I'm only going by what I've been told here.

Mr. Albas.

**Mr. Dan Albas:** Thank you. Could we pass to Mr. Woodworth?

**The Chair:** Sure, no problem.

Mr. Woodworth, you have the floor, sir.

**Mr. Stephen Woodworth:** Thank you very much.

I'd like to continue with the conversation we had a little earlier, Ms. McMahon, because what we've heard today is that there has been significant demonstrable success to this Liechtenstein project, and what we have heard today is that there has been significant financial recovery and benefit from the audits. But we also heard continual questioning from the opposition about why taxpayers weren't prosecuted.

I know in your report you shed light on the use of these non-prosecution agreements by the CRA as a means of gathering information and intelligence, and in paragraph 9.28 you've indicated that these agreements did serve a purpose. So I assume it was the proper approach for CRA, and I would like you to comment a little on why that approach was necessary and why we were better served because of the intelligence gathered.

**Ms. Marian McMahon:** Thank you for the question, Mr. Chair.

We didn't evaluate whether it was the appropriate action. We audited the actions undertaken by the agency. By the time our audit had started, the agency had already entered into these agreements, so we reviewed the purpose, the reason behind entering into those agreements. We stated we didn't evaluate any post-mortem on that, and we do mention that they should analyze their own success or lessons learned from the use of those agreements on a go-forward basis.

**Mr. Stephen Woodworth:** Could you elaborate a little about what you discovered concerning the purpose of those agreements?

**Ms. Marian McMahon:** Thank you, Mr. Chair.

Where we say specifically that the agency informed us of the purpose of the agreements.... They had made a trade-off between either obtaining information by entering into the agreement or considering prosecuting taxpayers, and we just state what management had told us.

• (1700)

**Mr. Stephen Woodworth:** For example, you state in a positive sense in paragraph 9.24 as follows:

In a criminal prosecution, the Agency must ensure that the information obtained will hold up in court. Once a taxpayer learns that he or she is being investigated with prosecution as a possibility, he or she is no longer obliged to provide information to the auditor.

Are you saying that you didn't verify those statements? I took them to be accurate statements and I'm not sure now from your answer if you're telling me that you didn't mean them to be accurate or verifiable statements.

**Ms. Marian McMahon:** Yes, they are verifiable statements. The auditors we are referring to are the Canada Revenue Agency staff.

**Mr. Stephen Woodworth:** The fact is that I can take it to the bank that once a taxpayer learns that he or she is being investigated with prosecution as a possibility, he or she is no longer obliged to provide information to the auditor. Is that correct?

**Ms. Marian McMahon:** Yes.

**Mr. Stephen Woodworth:** In fact, one purpose for a non-prosecution agreement would be to induce the individual to provide information. Am I on the right track there?

I'm just trying to read what you wrote and understand it.

**Ms. Marian McMahon:** Go ahead.

**Ms. Heather Miller (Director, Office of the Auditor General of Canada):** Mr. Chair, could I answer?

The agency was dealing with a situation whereby taxpayer information was provided to them at a fairly low level. They didn't

have a great deal of detail. Early on in the chapter we explain in paragraph 9.7 that all they had was the name or date of birth and a dollar amount for some of these people, so in some of these cases, when they entered into the agreement, it wasn't so much that if they went into the agreement they could waive prosecution, although that was the result. When they were going into the agreement with these taxpayers they couldn't possibly have been in a position to prosecute because they didn't have any information, so on obtaining the information from the taxpayers, had they not signed the agreement, they wouldn't have received the information. It's a chicken and egg situation.

**Mr. Stephen Woodworth:** The whole point of this division is to obtain sufficient information to assess the taxes owing.

**Ms. Heather Miller:** And to learn about how these structures are set up and how to go forward from these. That was part of the mandate of this project.

**The Chair:** Very good. Thank you.

We have concluded a full rotation of our questions and by previous agreement we will move forward, but beforehand, first of all, on behalf of the committee let me thank our guests today and let me also emphasize the appreciation we have for both the fulsomeness but also the tightness of the responses, which is not easy to do. So very well done.

Thank you so much for being here. We appreciate it. You may now leave and head home to your families.

Colleagues, you're not quite so fortunate. I will suspend this meeting for a few moments to allow people who are not included in the business section of our meeting to leave, and also to allow the technicians to reset. We will reconvene in a couple of moments in camera to do committee business. This portion of the meeting now stands suspended.

*[Proceedings continue in camera]*

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