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• (1105)

[English]

The Chair (Hon. Karina Gould (Burlington, Lib.)): Good morning. Happy Monday. I call this meeting to order.

Welcome to meeting number 11 of the House of Commons Standing Committee on Finance.

Today's meeting is taking place in a hybrid format.

Before we begin, I would ask all in-person participants to read the guidelines written on the updated cards on the table. These measures are in place to help prevent audio and feedback incidents and to protect the health and safety of all participants, including the interpreters. You will also notice a QR code on the card, which links to a short awareness video.

Pursuant to Standing Order 108(2) and the motion adopted on Monday, September 22, 2025, the committee shall resume its study of the use of offshore tax havens.

I would like to welcome our first two witnesses.

We have Patrick Marley, a partner at Osler, Hoskin and Harcourt. From the Canadian Labour Congress, we have Dr. D.T. Cochrane, who is a senior economist.

You will each have five minutes for your opening remarks, after which we will open the floor to questions.

Dr. Cochrane, we'll begin with you. Thank you.

D.T. Cochrane (Senior Economist, Canadian Labour Congress): Good morning.

Thank you for inviting the Canadian Labour Congress to comment on the serious problem of offshore tax havens. My name is D.T. Cochrane. I am a senior economist at the Canadian Labour Congress. I have a master's degree in economics and I earned a Ph.D. that examined corporate strategies for increased returns, including such financial practices as tax avoidance.

The CLC represents affiliated unions with over three million members in sectors across the economy. These workers tell us how worried they are about the state of the economy. They worry for their jobs. They worry about the cost of living. They worry for their children's futures. There are many sources for these worries; however, the blame falls largely upon decades of bad economic policies, including those that facilitated the explosive growth in tax haven use by the ultra-wealthy and biggest corporations.

Before joining the CLC, I worked for Canadians for Tax Fairness, or C4TF, which has been sounding the alarm about tax havens for well over a decade. The problem gained renewed attention during the recent federal election because of now Prime Minister Mark Carney's previous employment with Brookfield Asset Management. In 2023, while with C4TF, I wrote a report that identified Brookfield as Canada's "runaway leader in identified tax haven subsidiaries". When Mr. Carney was asked about Brookfield's use of tax havens, he dismissed legitimate concerns by saying they "abide by the rules".

However, that is the problem. Why do the rules let this happen? These rules were created under the ideological claim that lower corporate taxes produce more investment, increase productivity growth, create better jobs and improve well-being.

We got lower corporate taxes. Did we get those other things? No.

Instead of increased investment, corporations funnelled more money through tax havens and distributed more profits to shareholders. Tax haven use deprives governments of revenue with no demonstrable economic benefit. This undermines the government's ability to operate effectively and efficiently. It also places more of the tax bill on working families. Corporations like Brookfield depend on such government services as a secure financial system, contract enforcement and support for a healthy and educated workforce, but they do not contribute their fair share to sustain them.

This is relevant on the eve of a federal budget that the PM says will slash government spending to reduce the deficit. Setting aside overblown hysteria about the deficit, the Carney government is choosing to use cuts instead of raising revenue. This reflects the same thinking that justified tax havens and got us into our current economic predicament. Worse income and wealthy inequality is perhaps the most consequential result of that thinking. The increased use of offshore tax havens is closely linked to these problems.

Cracking down on tax havens would help reduce inequality and bring more revenue for governments. There are many facets to this problem, including money laundering and corporate profit-shifting, but with my remaining time, I want to focus on transparency.

A key challenge in tackling illegitimate tax haven use is their opacity and secrecy. That's why much of our knowledge comes from such leaks as the paradise papers. There are many transparency measures that would help, including the public beneficial ownership registry that the previous government made laudable progress on. I will emphasize the need for public country-by-country reporting, or PCBCR.

PCBCR discloses financial metrics, such as revenue, profits and taxes, paid by the biggest transnational corporations for each country where they operate. The information to be disclosed is already collected by the Canada Revenue Agency. Such disclosure would reveal where these corporations claim their profits and pay their taxes—or don't. Although we know that corporations like Brookfield have a large legal presence in such tax havens as Bermuda and Delaware, we don't know how much profit they are claiming there to avoid taxes.

Australia recently implemented PCBCR. It should be a no-brainer for Canada to follow suit. After decades of failed economic policies that have made people angry and worried, it is time to chart a new course toward greater fairness. Increased transparency around tax havens is a small step in that direction.

Thank you.

The Chair: Thank you very much, Dr. Cochrane.

Mr. Marley, you have five minutes.

Patrick Marley (Partner, Osler, Hoskin and Harcourt LLP, As an Individual): Thank you for inviting me to speak here today.

I'm Patrick Marley. I'm a tax partner with Osler, Hoskin and Harcourt in Toronto and former co-chair of the tax group at Osler. I've been there for the past 27 years. Before working at Osler, I worked at the Department of Finance drafting tax laws in the international area.

I want to begin by commenting on some of the remarks that were made last week when the government officials were here. I think it's important to first understand and come to a common understanding of what we are looking at with the use of offshore companies and the distinction between the use and misuse of offshore companies.

There was some discussion last week about the difference between tax evasion and tax avoidance, and I think that's a very important distinction. Tax evasion is deliberately not paying the taxes that you owe. That's obviously a crime, and it's something that Canada and the CRA should absolutely stop. Tax avoidance is very different. That's lawfully abiding by the tax rules and not paying the maximum amount that you possibly could otherwise pay. I know the government officials mentioned that there should not be a pejorative inference taken from tax avoidance, but just to put it into perspective, anyone who contributes to an RRSP or a government pension is engaged in tax avoidance. They're not paying the maximum amount of tax they could have paid. They're abiding within the rules and claiming the deductions or entitlements that they're allowed.

There was also discussion about the tax gap, and I think it's important to focus on what the tax gap is. If it's a measure of tax eva-

sion, then that's very clear—it's a measure of how much tax people are intentionally not paying, whether it's through the use of offshore companies or otherwise. I think the CRA should absolutely do what they can to stop that and to decrease the tax gap.

Keep in mind that if somebody's engaged in criminal tax evasion, any kind of public disclosure or new disclosure rules apply to everyone, whether they're law-abiding taxpayers or otherwise. If somebody's going to break the law, they're not going to follow some laws and not others, so it's not likely to help prevent tax evasion to make everybody comply with more reporting.

Also, if the tax gap is measured based on the amount of taxes that could be owing, given the uncertainty of whether taxes are owed or not, that's a very different aspect because the tax laws are very complex. In many cases, thinking people can disagree on whether taxes are owing. That's why we have a CRA appeals branch and the courts, because there might be a legitimate difference of opinion in terms of how taxes are interpreted. To me, that's not the tax gap, but that's an important distinction. To combat that, I think the best way forward is to simplify the tax rules. You'll get rid of some of the complexity, make it more straightforward, increase the administrative guidance and rulings processes and otherwise try to avoid that.

The last aspect that I think it's important we don't lose sight of is taxes that are assessed unfairly and inappropriately by the CRA. Unfortunately, sometimes we do have aggressive CRA auditors who assess taxes that were never owing to begin with. In many cases, those audits are overturned by CRA appeals and never make it to the courts, but not until after, in some cases, years of fighting with the CRA to try to get them to agree that those taxes should never have been assessed. Again, I think to combat that, it's perhaps better to disclose situations where certain auditors have their tax audits—the amounts assessed—overturned by CRA appeals or the courts, or by better training to CRA officers along the way.

Again, these are very different approaches, depending on how you're measuring the tax gap and how you go about it.

The last thing I want to mention is this distinction between the use of offshore companies versus the misuse of them. We operate in a global economy. Many large multinational companies in Canada have operations not just in Canada but around the world. That necessarily involves investments in offshore companies. There might be joint ventures or different investor classes investing in a particular investment. In some cases, they might want to use a partnership that is fiscally transparent, which allows each investor to be taxed according to its own attributes. In some cases, you might have investors from different countries, which necessarily involves investing through, perhaps, a third country to accommodate those.

• (1110)

Very quickly, I would mention that, with the advent of pillar two and the Global Minimum Tax Act, large Canadian multinationals will pay at least 15% in every jurisdiction in which they operate.

Thank you.

The Chair: Thank you to both of our witnesses for their opening remarks.

We're going to start with Ms. Cobena from the Conservatives for six minutes.

Sandra Cobena (Newmarket—Aurora, CPC): Thank you, Madam Chair.

My question is for Mr. Cochrane.

You mentioned in your opening remarks how there is aggressive corporate tax avoidance. One of the companies that obviously has been in the spotlight is Brookfield, which is particularly concerning because Prime Minister Carney was chair of Brookfield and continues to have interests in Brookfield today.

Can you talk a little bit more about how the burden of taxes shifts from corporations when they engage in aggressive tax avoidance to workers and consumers? Can you explain how the current loopholes in Canada's own tax laws enable that shift?

• (1115)

D.T. Cochrane: The complexity of our tax system lends itself to the creation of impressively creative schemes to avoid paying taxes. They make use of the complications in the rules in ways that were never really intended by policy-makers.

This is where the distinction between tax evasion and tax avoidance starts to get a little bit blurry. I would say there's a gradient. There are corporations using a tax avoidance mechanism exactly as intended—for example, research and development tax credits—and then there is a gradient all the way towards evasion where there is a use of our tax rules that abides by the letter of the law but violates the spirit of the law.

I would suggest that Brookfield has been a master of making use of our tax system in ways that range from perfectly legitimate all the way to seriously questionable. I'm not accusing it of having broken any laws whatsoever. I want to call attention to why the laws exist as they do and to the need to bring more light to bear on how taxes are being avoided. A lot of it is of dubious economic benefit to Canada and to Canadians.

Brookfield has really been a master class in this tax avoidance when you look at what its effective tax rate is versus what you would expect it to pay, based on the combined provincial and federal income tax rates.

Sandra Cobena: Of course, it's hard to have an exact number in terms of what that lost revenue is, but one of the independent studies mentioned that it was approximately \$15 billion. Can you speak to, because we have that loss of revenue, the burden that falls on average Canadians, the consumers and workers? We have that hole now and, of course, still have the expense on the government side.

D.T. Cochrane: Yes, if corporations are managing to reduce their tax bills through less than legitimate means, then that differ-

ence has to be made up somewhere. It can be made up either by increasing the taxes on other taxpayers, primarily workers, or by making cuts to services that Canadians depend on.

Sandra Cobena: Is it true that tax audits and prosecutions of corporate offenders are rare, particularly compared to those targeting individuals in the small businesses in Canada?

D.T. Cochrane: The area of this that I know best compares Canada to some of our of our peers around the consequences from the big leaks that we had, like the paradise papers, the Panama papers. To my knowledge, not a single Canadian ended up being prosecuted, based on the information that came out from those leaks, whereas many of our peers ended up prosecuting numerous people.

Whether this speaks to problems with our actual tax law that meant people weren't breaking laws that seem egregious or if this is a problem on the prosecution side of things, I do know that there is a lot of incentive for those whom the CRA is trying to prosecute to really dig in their heels and fight with everything they have. This is because there's a good chance that they will end up getting away with the taxes that they didn't pay, and the cost associated with fighting is going to be less than if they lost the case and had to pay the taxes.

Sandra Cobena: What are the loopholes in the Income Tax Act that currently allow entities like Brookfield to operate in subsidiaries abroad without full domestic taxation?

• (1120)

D.T. Cochrane: There's a big concern when corporations are operating transnationally about what's called double taxation—that they'll get taxed twice on the same income in different entities. We have tax agreements with many countries as a means of trying to prevent double taxation.

What will end up happening is you'll get double non-taxation. Tax havens are a particular scourge on this front. Income that gets claimed within a tax haven could end up not being taxed at all, anywhere. The actual details of how these all get used and the particular tax rules in different countries are very complicated.

The Chair: Thank you, Mr. Cochrane. That's time.

Thank you, Ms. Cobena.

[*Translation*]

We'll now go to the Liberal Party. Mr. Leitão, you have the floor for six minutes.

Carlos Leitão (Marc-Aurèle-Fortin, Lib.): Thank you very much, Madam Chair.

Gentlemen, thank you for coming to take part in these very important discussions.

My first question is for you, Mr. Cochrane.

You mentioned that one of the big problems was really the lack of transparency, or the opacity. That's indeed an extremely significant obstacle. In that context, you also mentioned the measures that governments have taken regarding the ultimate beneficiaries who benefit the most from these tax havens.

It's a complex system. However, some measures have already started to be taken. Where would you rank international co-operation and collaboration on the scale of important things to do?

[English]

D.T. Cochrane: At the current moment, I would rank this right at the very top.

You are correct that measures have been taken to deal with international tax avoidance and illegitimate uses of our tax rules. I would say that the Department of Finance and the CRA are extremely good at identifying when schemes have been constructed for illegitimate purposes and at eliminating those schemes.

A couple of budgets ago there was the elimination of what is called hybrid mismatch, which is a complicated mechanism for identifying income as coming from interest on one hand and equity on the other hand as a means of reducing the taxes owed. Those departments are really good at that kind of thing, but it's always going to be a little bit like whack-a-mole. They are always going to be behind the creative process of making these schemes.

Something like PCBCR allows more people to start digging into the information and identify where at least questionable claims of profit and tax are being made.

We know, for example, that Brookfield has dozens of subsidiaries in Bermuda. Bermuda, if I remember correctly, has an \$8-billion GDP. How much revenue or profit is Brookfield claiming in Bermuda? That would be a massive red flag if they're claiming large amounts of revenue there, given the size of Bermuda's economy.

PCBCR really is sunlight as the best disinfectant. It would allow academics and researchers outside of the tax authorities to engage in the kind of research that we need to deal with this whack-a-mole problem. There will always be incentive to create these schemes. We need more methods of confronting them.

Carlos Leitão: Thank you very much.

Mr. Marley, you made a good point, of course, on the differences between tax evasion and tax avoidance. You mentioned, for example, RRSPs.

A lot of Canadians have RRSPs. In those RRSPs, a lot of Canadians have mutual funds. Some of those mutual funds invest in offshore markets...or international markets. I would rather use that term. They are international stock markets.

In that context could, for example, a Canadian having a mutual fund that invests in the Japanese market to some extent be considered tax avoidance?

• (1125)

Patrick Marley: I don't think that's tax avoidance at all, but I'll just give a quick example to tie in with what you were just saying.

If you have a mutual fund that's investing in a Japanese fund or Japanese markets, in many cases you'll have investors not just coming from Canada; you'll have investors coming from all different jurisdictions. We're a very small player in the global scheme. U.S. private equity, for example, is a very important capital source around the world. U.S. private equity often invests through Cayman into the partnerships. Partnerships are fiscally transparent so they're not taxed at all. It doesn't matter if they're in the Cayman Islands. You could be in Canada. Canadian partnerships are not taxed. They're also fiscally transparent. The reason partnerships, particularly from mutual funds or RRSP investments are very important is that you might have a tax-exempt pension fund in Canada, a charity from the United States and a taxable investor from Japan all investing together. They're not going to want to invest in a Canadian company if the underlying investments are in Japan. They're going to want to invest somewhere where there's tax neutrality, such as the Cayman Islands.

Carlos Leitão: I think that's quite clear. Thank you very much.

I will ask Mr. Cochrane the same question.

The Chair: You have about 10 seconds left, Mr. Leitão.

Carlos Leitão: Is international co-operation good?

Patrick Marley: International co-operation is good. With respect, I don't think we need public disclosure. I think the tax authorities are the ones that really need that information.

The Chair: Thank you, Mr. Marley.

Thank you, Mr. Leitão.

[Translation]

I will now give the floor to Mr. Lemire, from the Bloc Québécois, for six minutes.

Sébastien Lemire (Abitibi—Témiscamingue, BQ): Thank you, Madam Chair. Thank you for having me.

Thank you to both witnesses for being here to discuss this important topic.

Mr. Marley, I'll start with you.

The Prime Minister has said that the use of tax havens isn't a form of tax avoidance, because the taxes end up being paid in Canada.

Can that claim be considered accurate from a tax and ethics standpoint, or is it a questionable justification for a mechanism that circumvents the spirit of tax laws?

[English]

Patrick Marley: With apologies, I will respond in English. My French is not very good.

In short, there is nothing wrong with investing in tax havens, or companies investing in tax havens, so I agree with that remark. We must remember that corporations are not people. Taxes paid by corporations are ultimately paid by the shareholders, the investors, or by the employees or other stakeholders.

I think having corporations overpay for their taxes particularly in a multinational environment puts them at a competitive disadvantage and makes it more difficult for Canadian multinationals to compete internationally with others. From that perspective, I think it's important that between the source country where income is ultimately earned and the resident's country, and let's say that's Canada, we don't have additional layers of tax along the way. We need neutrality to allow the income to flow up to the investors and the shareholders. That is what funds not just our pensioners, but also our shareholders and our capital markets.

[Translation]

Sébastien Lemire: From what you're saying, I understand that there's a good use for tax havens. However, where do you see the line between legitimate tax planning and aggressive tax avoidance? It's important to remember that taxes are ultimately used to provide social services to people who need them, and multinationals don't fall into the category of people in need.

[English]

Patrick Marley: In terms of where I would draw a clear distinction between the proper use of offshore companies and the misuse of offshore companies would be particularly where certain countries had bank secrecy rules where wealthy individuals around the world could invest their passive investments in those countries and avoid detection through banking secrecy.

Canada and others in the OECD have made terrific inroads in eliminating banking secrecy rules. The common reporting standard rules, the FATCA and tax information exchange agreements all allow the tax authorities access to the information to stop tax evasion and the misuse of offshore companies in those ways.

We have very detailed tax rules. Again, I worked in the department. From the nineties to now, there have been continuous improvements and refinements of those rules to ensure that we get the right balance between allowing active business income to be earned offshore in a competitive way and taxing currently, on a current basis, in Canada any passive investment income.

• (1130)

[Translation]

Sébastien Lemire: In that sense, can it be broadly considered that Canada is a tax haven of sorts for certain multinationals, such as the digital giants, which operate in Canada without paying their fair share of taxes?

In that regard, it should also be mentioned that the Prime Minister, Mark Carney, has sided with those companies by distancing himself. From what we understand, he also has a personal financial interest in having the digital giants and big corporations not pay

taxes or having them engage in a form of tax evasion or tax avoidance for the benefit of the United States, which has consequences here.

Is there a conflict of interest on the part of the Prime Minister?

[English]

Patrick Marley: I don't think there's a conflict of interest. Again, particularly in this area, the courts have said the tax rules are extremely complicated and precise. The complication and precision are important. Where there's a difference in views, where thinking people disagree on whether taxes are owing, that's where we have the courts to make those decisions.

Ultimately, in terms of what the fair share is, or the correct amount of tax, that's up to Parliament to decide. Anytime Parliament disagrees with a court decision, the proper process is to then amend the rules to however Parliament would like them to be, to ensure the line is drawn clearly. What's inappropriate is to have ambiguous rules and not to have it clear and precise as to what amounts of taxes are owing.

[Translation]

Sébastien Lemire: Mr. Cochrane, do you want to respond to that?

[English]

D.T. Cochrane: The explosion in complexity of our transnational economy over the last several decades was the product of a change in rules that freed corporations to move money and other resources around the world much more easily. However, our failure to establish international rules around taxation created a huge opportunity to exploit all kinds of gaps and mismatches among the tax rules in different countries. That is a big part of the reason we've seen a massive explosion in the size of the biggest corporations and in the wealth of the wealthiest people. It's the use of creative accounting and creative legal mechanisms to exploit these gaps.

In addition to PCBCR, really we need to be looking at creating an international tax framework to eliminate these kinds of exploitable gaps and differences.

[Translation]

Sébastien Lemire: Thank you very much.

[English]

The Chair: Thank you, Mr. Cochrane.

[Translation]

Thank you, Mr. Lemire.

We're going to move over to the Conservatives now. Mr. Lefebvre, you have the floor for five minutes.

Eric Lefebvre (Richmond—Arthabaska, CPC): Thank you very much, Madam Chair.

Thank you to both witnesses for being here today.

My question is for you, Mr. Cochrane.

I'd like to come back to a topic from earlier. As was said, the Prime Minister tried to defend the use of tax havens by Brookfield, the company he used to head, by saying that it was a way for taxes to be paid here in Canada.

Isn't that a bit like laughing at Canadians who pay their taxes every week?

Do you agree with what the Prime Minister is saying, which is that the use of tax havens is a way to guarantee that taxes are paid in Canada, when you told us earlier that Brookfield was the master of tax avoidance?

I'd like to hear your thoughts on that.

[English]

D.T. Cochrane: Most of what I know about Brookfield, about its taxes and its corporate structure, just raises questions upon questions, and they certainly lend themselves to the concerns that you're pointing to. The last time I looked, Brookfield's effective tax rate was somewhere below 10% versus what you would expect of over 26% as a corporate income tax rate.

As it has been mentioned, they're lowering their tax bill through a whole range of methods, many of which are perfectly legitimate. We can say that we wanted them to do that, but there are probably a lot that are, at the very least, questionable. Given that Brookfield, as I mentioned in my opening remarks, relies on a lot of the things that governments provide to people, it should be making a contribution to those things.

It was said that corporations aren't people, but corporations like to play both sides of that. When it comes to taxes, they're not people. However, when it comes to certain other legal rights, they'll say that they have the same rights as being naturalized persons. Which is it? Corporations should be making contributions to the public revenue because they benefit from what the public provides.

• (1135)

[Translation]

Eric Lefebvre: You're confirming that Brookfield, the company that the Prime Minister used to head, paid less than 10% tax, when it should have paid 26%. When the Prime Minister tells us that this is a way to guarantee that taxes are paid in Canada, then, he's laughing at Canadians who pay their taxes every week.

[English]

D.T. Cochrane: Yes, we all have to pay our taxes. It's one of the things that binds us together. We love complaining about the weather; we love commiserating over sports, and we love complaining about our tax bills. It's a thing that binds us.

Corporations are always going to lower every cost they possibly can, so to suggest that the corporation lowering its tax bill is done to help Canadians, yes, I would agree that's pretty laughable. It's quite duplicitous about what a corporation exists for and then what the benefit is to the rest of us.

[Translation]

Eric Lefebvre: How much tax revenue do you think Canada loses every year as a result of tax avoidance mechanisms?

[English]

D.T. Cochrane: When I put out a report a few years ago, at that time, I believe it was in the tens of billions of dollars. I don't remember the exact figure, and I haven't updated those numbers, but I think it's safe to say it's in the billions. It's a number that, if we were collecting that revenue, could go a long way to doing some of the good that we know we need government to do.

[Translation]

Eric Lefebvre: It's clear that this is a major problem.

What could be done to modernize the regulations and prevent these losses?

[English]

D.T. Cochrane: One of the things I didn't talk about but was going to is the need for an updated general anti-avoidance rule, or GAAR. The previous government was in the process of updating GAAR. This is the rule that allows the CRA to identify where a tax scheme is maybe adhering to the letter of the law but it's clearly violating the spirit of the law. Then they will say, "No, you don't get to claim this reduced tax. You have to pay."

As far as I know, the process of updating GAAR is completely stalled. It hasn't been updated since the emergence of so many of the new features of our global economy, so I would like to see renewed movement on updating the general anti-avoidance rule.

[Translation]

The Chair: Thank you, Mr. Lefebvre.

[English]

Thank you, Mr. Cochrane.

We're moving to Mr. Sawatzky for five minutes.

Jake Sawatzky (New Westminster—Burnaby—Maillardville, Lib.): Thank you, Chair.

Thank you to the witnesses for coming in today.

Mr. Marley, in your introduction, you mentioned how some CRA agents could be better trained. Could you elaborate on some specifics on what kind of training might be useful here?

Patrick Marley: Sure.

Very quickly, I want to note, with respect, that the general anti-avoidance rule was recently significantly amended, and it has passed through Parliament, so that has in fact happened.

From a CRA perspective, again, I don't want to be disparaging against the CRA as an organization entirely. There are a lot of great people who work at the CRA who do a lot of great work. Unfortunately, as with any large organization, there are some auditors who spend a lot of time on an audit and then feel at the end of it that they need to show something for their effort, so whether it's because they're concerned with a TEBA, tax earned by audit, statistic or otherwise, in some cases they'll audit taxes that should never have been audited and should never have been assessed.

It's doing whatever the CRA can as an organization to prevent those instances. When they do occur, the CRA should try to identify what the root causes are, whether it's poor training, not enough supervision or just having the right incentives within the organization to ensure as best as possible that audits are accurate and not overturned on appeals or by the courts.

Jake Sawatzky: Thank you.

Additionally, I was wondering if we could go through some of the history, since, let's say, the 2000s. What are some of the measures that were in place that might have made it easier for this to happen, and what are some of the steps the government has taken since then?

• (1140)

Patrick Marley: Are you referring to the use of offshore companies, or...?

Jake Sawatzky: I'm talking about being able to track and prevent the use of offshore tax havens.

Patrick Marley: Very quickly, I'll go back a bit further. In the mid-1990s, there were significant changes to our foreign accrual property income, FAPI, rules, and those significantly expanded the ability of Canada to tax that income. We entered into a significant number of tax information exchange agreements with various countries, including Cayman Islands, Bermuda and others, to ensure that the CRA gets access to all the information there.

I mentioned the CRS, common reporting standard, and FATCA. That's very important for getting access to the bank account information, so that information gets automatically exchanged and the CRA gets access to that information as well.

There is expansion in our tax treaties and in the exchange of information provisions there.

I also noted briefly that the elimination of bank secrecy rules around the world is obviously very important to ensuring that the tax authority, the CRA, does get access to that information.

Again, in my view, the most important place for that information to be is with the tax authorities, who can use it in an appropriate manner. Once you make information public, that opens it up to all kinds of potential misuses, such as the potential kidnapping of executives of those companies as they travel abroad. If others know with precision how much a company might be able to afford to get them free, it opens up competitiveness issues with competitors scanning that public information if it were to be made public to try to figure out exactly how prices should be set against Canadian companies.

I think it's important that the information is there for the CRA and the Department of Finance. As you said, many steps have been taken over the last number of years to get access to that information.

Jake Sawatzky: Thank you.

In more recent years, let's say, over the past 10, what could be some of the specific steps that the government has taken?

Patrick Marley: I think that the most recent significant step is pillar two in the Global Minimum Tax Act. Canada's participation

with the OECD and the G20 includes a framework that puts a 15% minimum tax for the largest multinational companies in every country around the world. That obviously ensures that taxes are being paid in each jurisdiction where the income is earned.

Jake Sawatzky: Going forward, what would be your suggestion in terms of how we can do better for Canadians here?

Patrick Marley: To me, the best way to improve things for Canadians is to add more clarity to the rules and simplify them.

We have done a lot for expanding rules, including our EIFEL rules, which restrict interest in financing expenses. We have not done enough to simplify the rules, for example, by eliminating the foreign affiliate dumping rules, which are entirely redundant.

The Chair: Thank you, Mr. Marley. That concludes the time.

Thank you, Mr. Sawatzky.

[*Translation*]

Mr. Lemire, you have the floor for two and a half minutes.

Sébastien Lemire: Thank you, Madam Chair.

Mr. Cochrane, in 2021, the European Union adopted a directive that requires large multinationals with sales of more than 750 million euros to publish their tax data, country by country. That directive applies to all companies operating in the European Union, even if their head office is abroad, such as in Canada.

Country-by-country reporting could make it possible to better monitor tax practices, but that data remains confidential in Canada.

Do you think that information should be made public in Canada?

[*English*]

D.T. Cochrane: Yes, I absolutely think this information should be made public.

I note the concerns that Mr. Marley raised. The same concerns were raised around the public beneficial ownership registry. Frankly, they are more significant around that measure, given that we're identifying actual beneficial owners, while in this case we're talking about massive transnational corporations, and 750 million euros is a very high threshold. This is really the biggest of the biggest companies.

Different countries, like Australia and the EU, are implementing public country-by-country reporting, and Canada making it public would help us understand much more about how transnational corporations are actually operating.

We need more than just tax officials understanding those things. Tax officials are going to look at this in one way, according to what their mandate is and according to what their technical expertise is; having the full slate of civil society actors looking at these matters will give us much more understanding about how transnational corporations are operating, for good and for ill.

• (1145)

[*Translation*]

Sébastien Lemire: Since coming to power, the Carney government has given up on implementing a strategic tax tool, namely a minimum tax of 15% on the global revenue of multinationals.

How much does it cost the public purse for that measure to be abandoned?

[*English*]

The Chair: Give a very rapid response, please.

D.T. Cochrane: There are costs of billions of dollars in not moving forward on this.

When I was at C4TF, we supported pillar two. However, given the fact that the entire integrated framework from the OECD looks like it's falling apart, we need to be looking to other mechanisms. Pillar two was important—

The Chair: Thank you, Mr. Cochrane.

[*Translation*]

Thank you, Mr. Lemire.

[*English*]

Mr. Kelly, you have five minutes, please.

Pat Kelly (Calgary Crowfoot, CPC): Thank you.

Mr. Cochrane, for years the Canada Revenue Agency has refused to supply anonymized data to the Parliamentary Budget Officer so that the Parliamentary Budget Officer could independently measure the tax gap.

How important is it to be able to independently quantify the problem of tax evasion?

D.T. Cochrane: It's extremely important. Knowledge is power. We should be empowering ourselves with all the forms of knowledge that we can. The Office of the Parliamentary Budget Officer is extremely important in that regard. Definitely, this should happen.

Pat Kelly: Without independent verification, it's difficult to take the CRA at their word when they measure these things, because the Auditor General continually exposes the inability of that agency to accurately report on itself. The call centre report is a perfect example: They thought they gave out correct information 95% of the time, but the Auditor General revealed that is not the case.

Can we take the CRA at its word, or do we need independent verification?

D.T. Cochrane: I think independent verification is needed any time any numbers are produced by anyone, regardless of what their reputation might be. Having some sort of independent verification is a basic tenet of science.

Pat Kelly: Yes. It keeps everyone honest, doesn't it?

We had testimony from the CRA last week. They revealed that they have had only 14 successful prosecutions since 2020, which is less than three per year on average. Are you impressed by that number or surprised? Do you have a reaction for us?

D.T. Cochrane: I'm not surprised. I wish I were.

Part of it is just how much behind the eight ball the CRA is versus the people whose interest it is to reduce their tax bill. They just have way more resources to be able to do so and to be able to fight the CRA. The CRA is very underequipped in this regard.

Is there a lack of urgency within the CRA for dealing with this problem? Perhaps.

Pat Kelly: Mr. Cochrane, I might challenge you a bit there and ask for your comments.

The CRA, in its last report, had 59,000 employees. That compares with the U.K. tax collection force, which has a little over 60,000, and the IRS in the United States, which has about 90,000. We have way more tax collectors per capita than our peer countries, yet they can only make 14 charges stick. Would that not suggest a misallocation of the resources they have?

D.T. Cochrane: I don't exactly know how those are distributed. It would suggest they're not being utilized to their greatest effectiveness, but are they also being equipped with the kinds of technologies that are now required more and more to deal with these problems?

Pat Kelly: They also need the correct laws. Evasion is criminal behaviour and not a matter of Canada not having the correct laws. That's a matter of enforcing the law.

What about aggressive tax avoidance? We have tax avoidance, which we all understand. Every taxpayer has the right to minimize their taxes within the law. However, for aggressive avoidance, wherein one knows they are violating the spirit of the law and are simply trying to get away with something they think they can get away with, can we quantify the size of that class of a non-taxpayer?

D.T. Cochrane: In theory, you can quantify anything. We would need to establish what our rules are for what constitutes aggressive versus non-aggressive tax avoidance.

I appreciate Mr. Marley's pointing out that GAAR was updated. That it slipped by my radar is a consequence of my not focusing on tax the way I once did. I'm happy to hear it was updated, but I don't know exactly what those updates are. It would be great if they include that we're going to try to measure something such as aggressive tax avoidance to identify where it's occurring and how much it's costing the Canadian public.

• (1150)

Pat Kelly: You mentioned the lack of criminal prosecutions in Canada regarding the Paradise papers, the Panama papers and other schemes. Knowing the employee count, I can't accept that the CRA doesn't have the resources. It must surely be a lack of management or priority in this area. What other explanations could there possibly be for the disparity between Canada and its peers?

D.T. Cochrane: One of the things we've heard about is how their efforts for auditing get focused on the big players, where it can be a multi-year effort of a handful of auditors undertaking this—

Pat Kelly: If I may, in my last seconds, would this be as opposed to, say, smaller individuals or a small business that lacks those resources?

D.T. Cochrane: Yes.

The Chair: Thank you, Mr. Kelly.

Thank you, Mr. Cochrane.

I'll turn to Mr. Turnbull.

You have five minutes.

Ryan Turnbull (Whitby, Lib.): I thank both Mr. Marley and Mr. Cochrane for being here. It's great to have you.

Mr. Cochrane, you used to work for Canadians for Tax Fairness. You said that in your opening remarks. In July 2025, they produced a report called "The Rise and Rise of Tax Havens". One of the quotes I noticed, which I'll read into the record, is, "We estimate that the signing of five tax information exchange agreements with tax havens in the early 2010s led to \$47.1B being shifted to tax havens over the next five years".

Do you agree with that statement?

D.T. Cochrane: I would need to look at the calculations. I trust the researchers who are there, so yes, I guess I would tentatively agree.

Ryan Turnbull: I notice that in July 2015, the Canadian Centre for Policy Alternatives wrote a paper called "The Big Heist", and said that the Harper government signed tax agreements with notorious tax havens, such as Bermuda, the Cayman Islands and the Isle of Man, to effectively legitimize their use by Canadian corporations.

Would you agree with that as well?

D.T. Cochrane: Yes.

Ryan Turnbull: Okay, so this problem didn't start with a Liberal government, as we would hear from the Conservatives regularly. They say that we've made no progress and that the Liberal government doesn't take this issue seriously. In fact, the opposite is the case.

I would like to get some information on the record.

Over the last 10 years, I understand that we've strengthened transfer pricing rules and had mandatory disclosure rules. We updated GAAR in Bill C-59. We added a 25% penalty on abusive tax avoidance transactions. I was part of that process, as I was parliamentary secretary at the time. We have EIFEL and anti-hybrid rules. We've participated in international leadership and co-operation in the OECD base erosion and profit shifting multilateral instrument. We've introduced a common reporting standard, or supported that. We played a leadership role in the Joint Chiefs of Global Tax Enforcement as well, and so on and so forth. There are quite a number of other things.

I want to get your perspective, Mr. Marley, on what progress we've made. Do you agree with all of the things I've laid out as progress in this matter? Are there any other things that we need to do?

Patrick Marley: Progress depends on the specifics.

I agree with the various measures that you've mentioned. I do agree that those are all various measures to combat the improper use of offshore companies and to ensure that Canada's collecting more taxes. I do agree with that.

In some cases, I would say those rules are excessively complicated and could use some reining in. However, I do agree that, through mandatory disclosure and all the various other changes, it provides more access to information, and therefore, as Alex MacLean was mentioning last week, the CRA having an ability to better risk manage their audits and focus their attention.

Lastly, I think a question was asked earlier about whether companies are being audited appropriately. I'd just note that, in my experience, every large multinational has continuous audits. Everything they do is carefully audited.

The T1134 reporting is excessively broad and, if anything, should be carved back because it's so complicated and there's so much information provided to the CRA that I think a lack of information is not an issue.

• (1155)

Ryan Turnbull: Thank you very much for that response. I appreciate it.

Mr. Cochrane, can you also acknowledge that we've made some progress? I get that we need to make more and that's why we're studying this issue seriously in this committee.

Can you make recommendations as to where you think we need to go?

D.T. Cochrane: This is, I guess, a bit of shameless self-promotion. I have a chapter in a book called *The Trudeau Record* about the tax measures the Trudeau government brought in. I lauded what was good and said it just was never enough. It didn't do the big things. It was good at doing lots of these different little things, but it did have the effect of making our tax system even more complicated.

I think something that should be considered is a new tax commission. It's been 60 years since the Carter commission put out their report that was intended to try to simplify our tax system, make it more transparent, make it fair. In those 60 years, our tax system and our economy have just become so much more complicated that it might be time to consider a new commission.

Ryan Turnbull: I'll quickly say that Bill C-69 on the global minimum tax during the last Parliament received royal assent in June 2024. I say that in response to Mr. Lemire's comments earlier saying that we backtracked on that. I don't think that's true.

Thank you.

The Chair: Thank you, Mr. Turnbull.

I would like to thank both of our witnesses.

We will now briefly suspend as we change over to the next panel.

Thank you so much.

• (1155) _____ (Pause) _____

• (1200)

The Chair: Colleagues, welcome back. We will resume the meeting.

I would like to welcome our witnesses.

We have Dr. Jonathan Farrar, professor at Wilfrid Laurier University, and Professor Jinyan Li, professor at Osgoode Hall Law School at York University.

Both are virtual, as you can see, and they've conducted a mandatory witness onboarding test. I would like to make a few comments for the benefit of the new witnesses.

Please wait until I recognize you by name before speaking. For those participating by video conference, click on the microphone icon to activate your mic and please mute your mic when you are not speaking.

For our witnesses on Zoom, at the bottom of your screen, you can select the appropriate channel for interpretation: floor, English or French.

This is a reminder that all comments should be addressed through the chair.

We will give each of you five minutes for your opening remarks.

We'll start with you, Dr. Farrar.

Jonathan Farrar (Professor, Wilfrid Laurier University, As an Individual): Good afternoon, Chair Gould and members of the committee.

Thank you for the opportunity to speak today. As a tax researcher, I conduct behavioural tax research in which I design surveys and experiments grounded in psychology theories to understand how individuals make tax-related decisions, including income tax reporting decisions. I would like to share with you some findings from three of my research projects.

The first project, completed in 2023, investigates how the general public responds when they learn that wealthy individuals go unpunished after engaging in aggressive tax avoidance using tax havens. The general public perceives aggressive tax behaviour as tax evasion. I designed an experiment using a scenario based on the KPMG Isle of Man tax scheme, which may be familiar to you. I was simply interested in knowing whether observers' tax compliance intentions would differ if a wealthy tax evader was punished versus unpunished. The results showed that observers' tax compliance intentions increased when a tax evader was punished versus unpunished. Put differently, failure for a tax authority to punish what members of the general public perceive to be an unfair tax violation in a tax haven setting has a negative impact on everyday taxpayers' compliance attitudes.

Members of the general public tend not to understand the distinction between aggressive tax avoidance and tax evasion. To them, the perception is that wealthy taxpayers are doing something wrong and are getting an unfair advantage by paying less taxes than they should. Thus, for everyday taxpayers who have opportunities to engage in tax reporting non-compliance, such as from side hustles or upselling World Series tickets, there are negative spillover effects on them from media stories about tax havens in which perpetrators of egregious tax avoidance schemes go unpunished.

A second project I did, completed in 2021, analyzed a 10-year sample of all media conviction notices published by the Canada Revenue Agency, or CRA. For purposes of this presentation, I will simply note that there were zero reported convictions for offshore tax evasion. That number may have changed a little bit since then, but not by much.

A third project I have recently started required me to make an access to information request from the Public Prosecution Service of Canada, or PPSC. I requested records about the charges laid by the PPSC relating to the Income Tax Act from January 2010 through May 2025. High-level findings from this data reveal that only about one-third of the charges laid by the PPSC relate to tax evasion in some form, in section 239 of the Income Tax Act. The remaining charges are for failure to file a tax return, in section 238 of the Income Tax Act.

The number of charges overall have dropped from a high of 2,397 in 2010 to only 43 in 2023 and to 47 in 2024. Furthermore, the average number of days from tax evasion charges to sentencing is well over 2,000, and in some cases exceeds 3,000, depending on the specific provision in section 239. Thus, it can take many years for a tax evasion case, almost all of which could be domestic tax evasion, to work its way through the court system.

The takeaway from these three projects is as follows: prosecution in Canada for tax evasion is uncommon, and for offshore tax evasion appears to be virtually non-existent; prosecuting tax evasion is a very slow process; and prosecutions for tax evasion appear to have dropped drastically in recent years, which raises serious questions about the CRA's enforcement efforts. Exacerbating the situation is that the general public's perception of a lack of punishment for offshore tax evasion can have negative influences on domestic tax compliance, which is arguably a bigger issue than offshore tax evasion.

Whilst on sabbatical in 2023, I had the opportunity to work part time at the CRA in their audit, evaluation and risk branch. Overall, I was very impressed with the agency. Thus, my comments should not be misconstrued as an implied criticism of the CRA or the PPSC. Enforcement activities related to offshore tax havens require a delicate balancing act between limited enforcement resources and the risk of setting an unfavourable precedent under common law if a prosecution were to be unsuccessful.

• (1205)

Finally, Canada, like other countries, uses deterrence as one approach to improve tax compliance. Another approach, and one that I think Parliament might be advised to consider, is to reduce the incentives for using offshore tax havens. If incentives for using tax havens could be reduced, offshore tax activities would be curtailed and thus offshore tax non-compliance would be curtailed. Currently, corporations and high-income individuals have incentives to use tax havens because tax rates in Canada are much higher than tax rates in tax havens.

The Chair: Professor Farrar, could you just wrap up quickly?

Jonathan Farrar: Yes. I have two last sentences here.

Thus, the problem of tax havens may not be as much enforcement-related as it is tax system-related. My suggestion would be to reduce both corporate and personal tax rates.

Thank you.

The Chair: Thank you, Dr. Farrar.

Next is Professor Li for five minutes. Thank you.

Jinyan Li (Professor, Osgoode Hall Law School of York University, As an Individual): Thank you, Madam Chair and the committee for inviting me.

I listened to part of the hearings before my session, so I'm aware of the interactions between the committee and the finance and CRA officials. I listened to part of Patrick Marley's testimony as well.

I'm going to focus, in my remarks, on the rules in our income tax law about dealing with tax havens.

Before I do that, I want to provide some background and also a footnote that I have provided a 10-page note to the clerk. After today's session, I will probably revise it and turn it into a brief, so the committee can have a fuller explanation of the complex rules that I'm going to touch on.

Let me turn to some background. The use of offshore tax havens is a very intriguing problem as a matter of law for several reasons.

First, the term "offshore tax haven" is not defined in the Canadian Income Tax Act or Canadian tax treaties. There's no definitive definition of this term.

Second, every country has sovereign right to choose the kind of tax system they want to use. Every country can potentially be a tax haven. In fact, many countries are tax havens in one way or the other.

Third, assessing the fiscal impact of the use of tax havens in Canada is beyond the realm of my research and expertise, so I'm not going to touch on that, but I do want to highlight the fact that estimating the amount of tax lost depends on complex and sometimes challenging statutory interpretations and availability of reliable data.

Fourth, another reason why tax havens are an intriguing problem is that using tax havens is not universally bad, wrong or inappropriate. Canadian tax law actually kind of approves or even encourages the use of tax havens in some cases to advance Canadian tax policy objectives. It requires a nuanced analysis of who actually benefits from the use of tax havens. If time permits later on, I will come back to this issue.

Finally, I find the problem to be very intriguing and complex because it is not a new problem. It has been a problem for a very long time. The Canadian tax law has provided some countermeasures, but there are some serious limitations on what Canadian tax law can do.

As a law professor, I will focus on the law. First, as a matter of law, Canadian tax law can only tax what the law can identify as Canadian income. Canadian tax law defines Canadian income by reference to the Canadian residence of a corporation or an individual, or a Canadian source of income. Neither concept—residence or source—has an ironclad definition. There are ambiguities in this fundamental connecting concept.

Second, Canadian tax law cannot operate on its own. It has to depend on private law to operate and for fundamental definitions, like what a corporation is. Is a contract a contract for tax law purposes? There are no straightforward, simple answers in many cases.

Third, tax law does not...totally depends on private law. It neutralizes the private law's effect only in specific circumstances. We call them specific anti-avoidance rules. The FAPI rule and the transfer pricing rule are such rules. All specific anti-avoidance rules are double-edged rules. They shut down specifically defined tax avoidance schemes, but they also pave a way for tax planning because as long as the tax structure is safely on the right side, they can do it.

Last, Canadian tax law is limited by public international law. Canada can only tax what belongs to Canada—

• (1210)

The Chair: Professor Li, can you wrap up quickly, please?

Thank you.

Jinyan Li: Yes.

Given these limitations, Canada's laws have various anti-avoidance rules that you already heard about: transfer pricing rules, FAPI rules, GAAR and mandatory information reporting rules.

I hope I can explain the complex [*Inaudible—Editor*] reasons later.

The Chair: Thank you, Professor Li.

We have to move on to questioning now.

We're going to start with Mr. Kelly from the Conservatives for six minutes.

Pat Kelly: Thank you to the witnesses.

Professor Farrar, you had a lot of statistics in your opening statement. I'd like you to unpack the decline in successful prosecutions for tax evasion. You said that in 2010—and I'm not sure we know the number of convictions—there were 2,300 charges laid. It sounded as though this was down to 43 in 2024. That's a shocking decline in the number of charges laid. In addition, you said there were zero convictions reported.

Last Wednesday, I asked officials how many there were in the most recent year of reporting, and they answered by saying there had been 14 over the last five years.

Could you walk us through some of the numbers in terms of the decline in tax evasion prosecutions for offshore evaders, which was the point of my question on Wednesday?

Jonathan Farrar: Sure.

To address your first comment, the study I did that I was referring to was a sample of all the media conviction notices. That was from 2006 through to 2015. My point was that, in the 10-year window, there were zero convictions for offshore tax evasion. I understand that since then, there may have been a handful, but it was a 10-year sample that I had access to.

In terms of what I was referring to about the charges laid, 2010 was the first year for which I had data. I found that there were 2,397 charges for tax evasion in 2010, and that number had dropped precipitously to 43 in 2023 and 47 in 2024. That seems to be a fairly drastic decline, and I don't know the reason for that. Over the 15 years that I have data for, you would see very much a downward trend in the number of overall charges that have been laid for tax evasion.

• (1215)

Pat Kelly: The overall trend over 15 years is downward quite shockingly, it would seem. Is that because there were fewer offences?

Jonathan Farrar: It's a hard question to answer. I don't know the answer to that.

It could be because the number of offences is declining, but my sense is that, if anything, they would be increasing or at least stable. I wonder how willing the CRA is to go after some of, for lack of a better word, the low-hanging fruit, the everyday taxpayer who would be engaging in activities that would not be subject to third party reporting. For example, if you have a chip wagon or something like that, the CRA tends not to go after the small fry, no pun intended.

Pat Kelly: If they're not going after either the small fry or succeeding in prosecuting the large offenders, what is really going on here then?

We assume that there is a tax gap, that taxes are evaded and that offshore havens are used in furtherance of that evasion, yet there appears to be minimal enforcement, at least as evidenced by criminal conviction, or even charges in recent years.

Jonathan Farrar: That's correct.

I would like to know from the CRA the answer to your question about why there has been such a drastic decline in the number of charges laid for tax evasion. It's very high-level data, and I don't have access to the details about each of those charges, but it's a trend analysis that would be concerning from an observer's perspective.

Pat Kelly: You've given us a reason for concern that hasn't come up in previous testimony. You referred to egregious avoidance. You used the words “egregious” and “aggressive”, as well as “evasion”.

Can you comment further about the impact this has on compliance? Canadians are willing to pay their taxes, and they understand that it's a basic responsibility, but your research indicates that when taxpayers learn that wealthy, complicated, high-level aggressive avoidance and evasion take place, that has a negative impact on their willingness to comply.

Jonathan Farrar: That's correct.

What I've found is that the average taxpayer does not understand, say, aggressive tax avoidance, using tax havens, which may by the letter of the law be technically legal. People tend not to perceive that as being legit, though. From their perspective, that is perceived as morally wrong, which is tantamount to tax evasion.

From the perspective of an observer, it's the perception I'm interested in. The perception is that if someone is using a tax haven, that is going to be viewed as something that is dodgy, if not outright wrong.

Pat Kelly: At a minimum, they would think that's something not available to them as a less resourced tax filer.

Jonathan Farrar: That's correct because you would have to be a fairly privileged taxpayer to be able to afford the services of a high-priced accountant or a tax lawyer to set up some kind of offshore tax scheme.

Pat Kelly: That's right. Then the end result, which was, I think, something you said you were concerned about, is how the prevalence of the use of offshore tax havens impacts domestic tax compliance.

Jonathan Farrar: That's correct. I'm concerned that if a number of the—

The Chair: Thank you, Professor Farrar and Mr. Kelly.

We'll now move to Mr. Leitão for six minutes.

[*Translation*]

Carlos Leitão: Thank you, Madam Chair.

Good morning, Professor Farrar and Professor Li. Thank you for participating in our committee on this very important topic.

I think the rules on bank secrecy and information sharing have already, on their own, led to great progress in recent years.

Professor Li, you intrigued me a bit when you yourself described this as an intriguing matter. I'd like to give you the opportunity to continue your explanation of the need for a slightly more nuanced approach when it comes to tax havens and, above all, those that benefit the most.

Can you tell us more about that?

• (1220)

[*English*]

Jinyan Li: I find it intriguing because whoever will benefit from the use of tax havens would require a multi-layered analysis. One example might be Brookfield Asset Management Limited. This

company has subsidiaries in Bermuda, and its investors include the Canada pension fund, the Ontario teachers' fund and many ETFs. According to The Toronto Star's reporting, many individuals, including some politicians, own ETFs, which ultimately own equity interest in the company that benefits from tax havens through using tax haven entities in Bermuda.

Tax havens are also known to the Canadian tax system. The Canadian exemption system uses some tax havens, in a way, to encourage competitiveness of Canadian businesses. The exemption system is one such example.

That's why I find the use of tax havens to be a very intriguing problem. There is no simple, straightforward fix to this multi-layered, complex problem.

[*Translation*]

Carlos Leitão: Thank you very much.

[*English*]

As you also mentioned, in terms of the tax rules and tax laws in Canada, and I presume in other countries, we can only tax Canadian income or Canadian-sourced income. If Canadians, with their after-tax income, choose to invest in a mutual fund in the Japanese market, that's quite tricky for Canadian authorities to tax the gains from that investment. Is it not?

Jinyan Li: As a practical matter, yes, because in obtaining information and not knowing which Canadian is using their after-tax income to invest where, if the taxpayer does not voluntarily report that information, CRA has to rely on information exchanged in double taxation treaties or in tax information exchange vehicles. Therefore, getting information is very challenging when the information lies outside the Canadian political boundaries.

Also, CRA is prohibited by international law to go after events, accounts in Japan for instance. Even without bank secrecy laws, public international law has this revenue law doctrine that prohibits governments or courts of one country from helping another government in enforcing its revenue laws or its criminal laws.

Carlos Leitão: Thank you.

Indeed, one thing I experienced from my days on the policy-making side at another level of government was that I noticed a huge increase in improvement in international collaboration and co-operation within the OECD context after about 2015 or 2016. There's a lot more international co-operation and exchange of information, with global minimum taxes and so on.

The question I have for you is this: Do you think all that progress over the last few years may now be somewhat in jeopardy given that one of the bigger players in the world economy, the United States, appears to be changing its views on international co-operation on tax issues?

Jinyan Li: That's a great question. I don't think the damage is as big as it might be, because the U.S. has always been an outlier in this global multilateral collaborative system. As far as information reporting goes, the U.S. benefits as much as Canada and other countries. I don't think President Trump is pulling out of those collaborative measures, but the U.S. has always been resistant to the global minimum tax. The pillar two global minimum tax future is uncertain. Its impact is uncertain.

In terms of information exchange, collaboration in gathering information, and even administrative assistance among participating parties, I think that is progressing. I hear from U.S. scholars that the U.S. Treasury benefits quite a bit.

• (1225)

The Chair: Thank you, Professor Li.

[Translation]

Thank you, Mr. Leitão.

Mr. Lemire now has the floor for six minutes.

Sébastien Lemire: Thank you, Madam Chair.

Professor Li, I was also surprised by your opening remarks. I'd like you to talk about that more.

Can you tell us which parts of the Income Tax Act encourage the use of tax havens?

[English]

Jinyan Li: Yes. I was intrigued by that discovery myself.

You are aware of the exemption system. Subsection 113(1) of the Income Tax Act exempts dividends received by a Canadian corporation from their foreign subsidiaries, including foreign subsidiaries located in tax havens, as long as the tax haven subsidiary is earning income from active business defined by Canadian law. Regulation 5907 provides detailed rules for tracking and identifying what kind of income earned by which subsidiary qualifies as active income.

The definition is not airtight. Let's say there's a Canadian subsidiary in Bermuda or the Cayman Islands. Both have TIE agreements with us. They're designated treaty countries. The subsidiary in those countries can earn income. As long as that income is not caught by our FAPI rules, that income is exempt and it's not taxable in that country. It's not taxed in Canada when it's earned and it's not taxed in Canada to the shareholder when it's paid as dividends.

This was a deliberate policy choice made by Canada when the new regime was introduced as a result of the 1972 tax reform.

[Translation]

Sébastien Lemire: You stated that the Income Tax Act doesn't include a definition of certain concepts, such as offshore tax havens.

Shouldn't those gaps be addressed as quickly as possible? We're getting the budget tomorrow. Does that also mean that the Income Tax Act is incomplete and that it's easy to slip through the cracks in the system, when the act should be protecting the interests of Canadians, particularly with a budget for which a monstrous deficit is expected to be announced?

[English]

Jinyan Li: I think it's a good idea. Whether a good idea can be translated into enforceable and legal rules is a different matter. There's a big gap between them.

In my view, I think it will be very difficult to define which country is an offshore tax haven. Many high-income countries, such as Luxembourg and the Netherlands, qualify as offshore tax havens for certain purposes. There's Bermuda and the Cayman Islands, of course. Barbados is in a different category. It is really hard for me to draft a definition that has legal effect and can be enforced within Canadian boundaries but also under public international law.

Canada is not alone. Other countries may counteract. International tax problems are complicated, because they're reflecting not only economic interest, fiscal interest and a sense of fairness among Canadians but also international relations. After all, tax law is an instrument. The Canadian government needs to do the delicate balancing that Jonathan referred to. It's a delicate dancing act. Canada needs to consider the multidimensions of the problem.

[Translation]

Sébastien Lemire: I'm intrigued by your answer, and I'd like to ask you the question I asked Mr. Cochrane earlier.

The European Union has adopted a directive that requires multinationals with sales of more than 750 million euros to publish their tax data directly, country by country. That can obviously include Canada, but we don't have that kind of oversight reporting.

Should we make that information public to ensure better tax fairness for Canadians?

[English]

Jinyan Li: I actually overheard your exchange with Mr. Cochrane. I thought that was very illuminating.

In addition to making the data public to empower the public to be a better contributor to the tax policy debate and maybe provide some oversight, there is the other side that Patrick Marley mentioned: the importance of secrecy for our self-assessment systems, secrecy and competitiveness of Canadian systems as a whole, the signal that we give to other countries.

In the international tax policy arena, economic clout matters. Canada's clout versus the U.S.A., which is U.S.-EU, is not equal. When the EU and U.S. do something, they think they can do it without too much negative impact. For Canada, the calculations need to be done very carefully. It's not a straightforward answer. If the EU does it and it's good for Canada.... The DST is an example. The EU is going ahead with the DST. They thought they could resist Trump first, but Canada pulled out from the DST, because it's a complex trade negotiation between Canada and the U.S. The calculation needs to be done in a way that serves Canada's overall interests.

• (1230)

[Translation]

The Chair: You have 30 seconds left, Mr. Lemire.

Sébastien Lemire: Do you think the Canada Revenue Agency is an effective deterrent to tax evasion and tax avoidance?

[English]

The Chair: Give a brief response, please.

Jinyan Li: Is that a question for me?

[Translation]

Sébastien Lemire: Yes.

[English]

Jinyan Li: I think Jonathan is a better expert than I am on this.

In my view, observing CRA from afar, I think they seem to be doing a very good job.

The Chair: Thank you, Professor Li. We'll have to conclude there.

[Translation]

Sébastien Lemire: Thank you.

The Chair: Thank you, Mr. Lemire.

We'll now go to Mr. Lefebvre for five minutes.

Eric Lefebvre: Thank you, Madam Chair.

Thank you to the witnesses for being here. I'm going to give Professor Li a bit of a breather, and I'll start with Professor Farrar.

We know that the Canada Revenue Agency's budget has increased by 70% in the last eight years under the Liberal government. There's been a decrease in the collections results, and you told us, Professor Farrar, that you found that very worrisome.

I'd like to know whether you think the Canada Revenue Agency effectively investigates tax evasion and whether prosecutions are conducted in the right way and at the right level.

[English]

Jonathan Farrar: It's a bit of a hard question to answer.

At the outset, I would expect, as I think you were implying, that there would be an increase in the number of charges laid if the budget to the CRA has increased. We would expect a positive correlation there. If we found the opposite, that definitely raises some issues.

[Translation]

Eric Lefebvre: Professor, that isn't the point of my question.

The budget has already increased by 70% over the past eight years, but the results are plummeting. Do you think the current way of doing things is effective?

[English]

Jonathan Farrar: If I had to answer that yes or no, I would say no. I don't know the exact reason why the number of charges is so low. From a purely layperson's perspective, an observer standpoint, because I don't know the internal workings of the CRA and how they allocate their audit resources, if I'm looking back asking why we have this decrease in charges yet this significant increase in funding, I'd think something doesn't seem to add up here.

[Translation]

Eric Lefebvre: How could the government make Canadian tax law clearer and more direct when it comes to tax avoidance? What could be done to improve it?

[English]

Jonathan Farrar: Something that could be done is to simplify the tax system. I'm not the first person to suggest that. By simplifying I mean to maybe reduce the amount of language we have in the Income Tax Act. It's very immense. It has something like 1.3 million words. The average taxpayer is not going to have the time or make the effort to go through all those words.

Some of the legislation is very precise and very technical for very esoteric purposes, but for the average taxpayer the language of tax is not very accessible. Trying to find a way to make the language a little easier to understand, I think, would go a long way to improving compliance.

[Translation]

Eric Lefebvre: Earlier this year, the Prime Minister tried to defend the use of tax havens by Brookfield, where he was one of the chief executive officers, by saying that it was a method for taxes to be paid here in Canada.

Do you agree with the Prime Minister's statement?

• (1235)

[English]

Jonathan Farrar: I would say that it's a bit of a deceiving statement, because it still involves the use of a tax haven and, if the Prime Minister has a vested interest in a company, there seems to be a conflict of interest there. I would be skeptical of those comments.

[Translation]

Eric Lefebvre: Thank you, Professor Farrar.

Professor Li, you said earlier that there was ambiguity in the law. What do you think are the weaknesses in the law right now?

[English]

Jinyan Li: There are so many. Transfer pricing rules have been touched on. Our transfer pricing rules can benefit from reform and make them better aligned with OECD guidelines. The GAAR has been improved, so I'm quite happy with the current state of the GAAR legislation. How the Supreme Court of Canada is going to interpret and apply it, especially in transactions and schemes involving offshore tax havens, however offshore tax havens are going to be defined, is yet to be seen.

Our tax incentive measure, the exemption system, I think, would also benefit from a very careful, systematic review as to whether the tax subsidy brings about a positive economic impact on the Canadian economy. Now the lines are drawn in a way that I don't think serves the Canadian purpose, so tightening up the exemption system will prevent that.

The Chair: Thank you, Professor Li.

[Translation]

Thank you, Mr. Lefebvre.

[English]

I will continue with Mr. MacDonald for five minutes, please.

Kent MacDonald (Cardigan, Lib.): Good afternoon to our witnesses.

We've heard from previous witnesses that Canada should establish an independent tax fairness commission to review the corporate tax practices in Canada.

What's your opinion on that, Professor Li? Do you think there's any benefit to this, or is the current system of the Income Tax Act answering to the Parliament of Canada the way it should be done? What is your opinion on this?

Jinyan Li: In short, I think yes, it is time to have a systematic review of the overall system, not only the corporate tax system but the system as a whole as to whether it is efficient and fair and serves the needs of Canadians in the new global geopolitical environment. The system we have was cast in the 1960s. The world is so different today.

Whether the party has the political capital and commitment to do it is difficult to say. It needs Canadians to have buy-in to revisit this most important fiscal instrument we have.

Kent MacDonald: In terms of forming another commission, I don't know if you've answered my question on that. Can you say whether that's—

Jinyan Li: Forming a commission is one way of doing it, I think. I think a commission like the Carter commission or Jack Mintz technical committee would be helpful.

Kent MacDonald: I'll put the same question to Dr. Farrar on forming an independent commission.

What's your opinion on that?

Jonathan Farrar: I think it could be a good idea, if you have a directed panel of experts. I think we need to update some of the current legislation in light of the sweeping changes that have hap-

pened since our last big commission, which I think was the Carter commission.

Kent MacDonald: Thank you.

Professor Li, we know that Canada's international tax system has evolved, and I'm asking a question that's been asked before. We had the reforms to the OECD put in on base erosion and profit shifting, but we're also hearing that there are still gaps in what we're doing to stop tax avoidance and tax evasion.

Can you speak to that? What other steps are needed?

Jinyan Li: First, the BEPS project has two stages.

The first stage produced specific anti-avoidance rules, like the excessive interest and financing expenses limitation rule, EIFEL, that we have. There are hybrid entity rules and mandatory disclosure rules. All of those rules have been adopted into Canadian domestic law. Those rules are exceedingly complex, so it's a double-edged sword.

BEPS phase two involves pillar two, the global minimum tax, which Canada has also adopted. The intersection between the global minimum tax and the set of complex rules in the Income Tax Act is yet to be studied and assessed as to whether the combination of the two set of rules will work. It's hard to know. I think simplification and integrating the two mechanisms will produce better results for taxpayers and the tax system overall.

In terms of intangible property, I think Canada's rules are quite weak in the sense that if you have a corporation that receives generous tax subsidies for R and D in Canada and you create a patent, you can transfer your patent when it has no market value to your tax haven subsidiary, and your tax haven subsidiary's licensing, exploiting, royalties, all of that income is tax-free from Canada because of our exemption system.

Canadians subsidized the creation of the patent, but Canada can never tax that income. Is that fair? If that's not fair, we need a new rule to deal with it. So far, we don't have a rule. Canadians create and develop that income, but Canadians don't tax it. It doesn't make any sense.

If I had the opportunity, I would try to craft a rule to make sure Canadian income remains taxable in Canada.

• (1240)

Kent MacDonald: Thank you.

What's my time, Chair?

The Chair: You have 20 seconds.

Kent MacDonald: Okay.

Quickly, what could Canada do to coordinate its tax enforcement with other jurisdictions better than we're currently doing?

Jinyan Li: I can't think of much. We have the legal apparatus already, so now the CRA needs to actually act upon the information to use it to audit and to detect non-compliance.

The Chair: Thank you, Professor Li.

Thank you, Mr. MacDonald.

[*Translation*]

Mr. Lemire, you have the floor for two and a half minutes.

Sébastien Lemire: Thank you, Madam Chair.

Professor Li, Canada facilitates tax avoidance for multinationals, particularly through subsection 5907(11.2) of the income tax regulations, which we discussed earlier. That provision makes it possible for income repatriated from countries with low or no taxation to be exempt from tax, provided that a tax information exchange agreement is in place, even if there isn't any real economic activity in those territories. Canadians are the ones who pay those taxes that the large corporations don't pay.

Why did the Department of Finance draft a regulation that allows for tax avoidance?

[*English*]

Jinyan Li: It's an excellent question.

The original intention of these rules was to make sure Canadian companies can compete overseas on the same level playing field as multinationals owned by the Japanese, the Americans and the Germans in the new markets like mining companies and financial institutions that are carrying on business. It's like BlackBerry operating overseas.

If we tax that income in Canada when the corporation is trying to compete with other companies, that will weaken the competitiveness of Canadian corporations. Exporting Canadian technology and productive capital not only is good for the corporation but is good for the Canadian economy. We want to export as much as possible. The tax rule is designed to achieve that goal.

The idea is a good one, but then what do we do to translate the idea into operational rules? We cannot qualify each country, each business and each corporation to see whether they fit, so we use proxies. The proxy is whether the foreign country is a reliable country. How do we know? We have a treaty with them—

[*Translation*]

Sébastien Lemire: Thank you. I'm going to interrupt you, because I want to ask you one last question.

The Chair: Mr. Lemire, can you slow down a bit for the interpreters, please?

Sébastien Lemire: Okay, Madam Chair.

You were a very influential adviser within the Department of Finance. Earlier, you said that making information on corporate tax public could threaten their competitiveness.

Are you saying that the European Union is also threatening the competition within its own market?

[*English*]

The Chair: Answer in 10 seconds, please.

Jinyan Li: I assume that's a question addressed to me.

I don't have any detailed information about the impact and analysis conducted in the EU, so my answer about the potential impact and—

• (1245)

The Chair: Thank you, Professor Li. I'm going to have to end it there.

[*Translation*]

Thank you, Mr. Lemire.

[*English*]

We'll continue with Ms. Cobena for five minutes.

Sandra Cobena: Thank you, Madam Chair.

My question is for Professor Li.

You've mentioned how complicated the tax code is, and you've tried to simplify it for us. I think Mr. Farrar mentioned that there are about 1.3 million words in the tax code. When the tax code is that complex and becomes a bit of a playground for the privileged in the sense that you need to be highly knowledgeable or able to afford to pay a professional who knows the code very well, it really becomes a bit.... It rewards those who can afford to pay for the interpretation of the complexity of the current rules.

Would you say that allowing those with resources to hide behind the complexity of the tax code actually disproportionately benefits those who have the resources, like the money to pay for those professionals?

The Chair: Professor Li?

Is she frozen? I think she might be frozen.

It looks like we have—

Sandra Cobena: Maybe Mr. Farrar...

The Chair: You can turn to Mr. Farrar.

Jonathan Farrar: Well, I would rather Professor Li answer that question, but if you want a yes-or-no answer, I would say that, yes, it certainly is a privileged system. If you can afford a high-priced lawyer and a high-priced accountant to save you considerable sums in income taxes, why wouldn't you do that? Then, of course, the general public is going to look at that as something that's unfair because it's very much a class-based system.

The Chair: We're trying to get Professor Li back, but she's not connected at the moment.

Sandra Cobena: Okay.

My next question was also for Professor Li, but I'll switch to Mr. Farrar.

If corporations continue to be rewarded for not paying taxes in Canada, won't this issue just continue to get worse because there is no deterrence, as you mentioned in your remarks?

Jonathan Farrar: Yes, I think it would only continue to get worse.

Sandra Cobena: What would you consider an effective deterrence to be?

Jonathan Farrar: Well, if I could maybe indirectly answer that question, I think a possible solution would be to reduce corporate tax rates, as well as personal tax rates, so that the incentive for using these offshore tax havens would be somewhat reduced or maybe significantly reduced. I say that because it's very difficult for tax authorities, whether it's the CRA or someone else, to effectively enforce any kind of offshore tax scheme because the line between tax avoidance and tax evasion is not crystal clear. If we could take away the incentives for using these offshore structures, I think we could solve the deterrence problem at the same time and maybe make things simpler.

Sandra Cobena: Do you believe that the CRA's enforcement capacity is adequate to deal with the complex international tax avoidance schemes we currently see?

Jonathan Farrar: I would say probably not, given the fact that the number of charges seems to be relatively low and the fact that the budget for international enforcement has increased. I don't think we're seeing a good bang for our buck.

Sandra Cobena: Thank you for that.

I guess Dr. Li's not back yet.

How effective do you think Canada's current legal framework is in addressing the aggressive tax avoidance through offshore tax havens?

Jonathan Farrar: I would say that it's probably as effective as it's going to be. I can't see it really changing anytime soon. That's in part because the rules as we currently have them are a little bit antiquated, and case law has shown us that it's very difficult to achieve a clear-cut prosecution for anything that is aggressive tax avoidance that borders on evasion.

• (1250)

Sandra Cobena: Could you speak to the gaps in Canadian tax law that make it particularly vulnerable to profit shifting or the use of tax havens?

The Chair: Answer very briefly please, Professor Farrar.

Jonathan Farrar: Very briefly, and this maybe piggybacks on Mr. Cochrane's comment from the previous session, the changes to the general anti-avoidance rule would help with that. I'm pleased to see that there are changes being made.

The Chair: Thank you, Professor Farrar.

With apologies to the committee, we are trying to get in touch with Professor Li, but we haven't been able to yet. However, Ms. Cobena and Mr. Turnbull, who is next, if you'd like to send in your questions in a written way, we can get a written response.

Thank you.

Mr. Turnbull, you have five minutes.

Ryan Turnbull: I had really hoped to focus on Ms. Li for my questions.

Mr. Farrar, I'm sure you'll provide great answers to questions I was going to pose to her. I have no choice but to pose them to you.

I wanted to make you aware of some statistics that I have in front of me. One is the impact from CRA compliance activities between

2020 and 2024. We see a steady increase year over year from \$12.2 billion in the 2020-21 tax year to \$18.1 billion in the 2024-25 tax year. That's a steady increase.

The other stats that I have here in front of me are that CRA cases referred for criminal investigation have also steadily increased. In the 2020-21 tax year, it was at 110, and in the 2024-25 tax year, it was at 173.

Again, year over year, if you look at the stats, there's a steady increase in CRA cases being referred for criminal investigation. You said that when you were working with CRA, you were really impressed by their work, yet you were somewhat critical of whether we're getting the bang for the dollar in terms of their enforcement activities.

I guess what I wanted to say to you is that we also see that criminal investigations have decreased, but the CRA is not responsible for those criminal investigations, are they? Who is responsible for the criminal investigations, sir? We see they have gone from 31 to 15 over the same time period.

Jonathan Farrar: My understanding is that they would be referred to the Public Prosecution Service of Canada, which would work in harmony with the CRA. At some point, it passes from the CRA to a different government agency.

Ryan Turnbull: Would you direct the same criticism here that you seem to have for enforcement activities through the CRA? I'm just saying that the criminal prosecution of those specific cases seems to be the gap, because more cases are being referred.

We heard that from CRA officials when they were here. Mr. Kelly tried to make it seem as though CRA wasn't doing its job. I pushed back on that and asked them for clarification. They were very clear that they are actually referring cases for criminal investigation, but maybe those cases are not getting pursued.

Is your suggestion then to increase the federal prosecution service and the resources they have so they can prioritize these cases? Would that be a recommendation you'd make?

Jonathan Farrar: Yes. I would say definitely, yes.

Ryan Turnbull: That's great. That's exactly what we've committed to in our platform, which is good.

I would also note that in budget 2022, our government under previous leadership committed \$1.2 billion to expand CRA audits and enforcement. That's over a five-year period. That's still in effect, in terms of money that's in the fiscal track that's added to CRA's capacity.

We see that this is having some impact. Over 850 audits were completed in 2023-24, resulting in \$101 million. That's in the departmental results report. Would you say that the money is well spent from the increased audit that we see completed?

Jonathan Farrar: If you ask it in that way, I would say yes, it seems to be money well spent.

Ryan Turnbull: I also note that the Auditor General did a report in 2018 to look at the yield of audits and showed that there was an increase by 60% from the Harper era to the Trudeau era. Would you agree with that, that there was a dramatic shift in terms of what results they had as a result of those added resources?

• (1255)

Jonathan Farrar: Yes, the audits seemed to be more effective.

Ryan Turnbull: Ms. Li, you're back. Welcome back.

I'm sure my time is almost out, but how much do I have?

The Chair: You have 20 seconds.

Ryan Turnbull: Ms. Li, I really appreciated your comments about the double-edged sword of rules and clarifying rules. I wonder if you could say a little bit more about that in the 10 seconds that I have left you.

The Chair: You have 10 seconds, please.

Ryan Turnbull: Is there no leniency for technical issues?

Jinyan Li: Every rule is double-edged, especially when it is an anti-avoidance rule.

The Chair: Thank you very much.

On behalf of the committee, I would like to thank the witnesses.

Professor Li, I'm sorry that we lost you for a few minutes, but I think you might have some written questions coming your way. Hopefully, you'll be able to respond in writing.

Given the hour, thank you to our witnesses. We appreciate your time today.

Committee members, you received a budget request on Friday regarding the study of the report of the Bank of Canada on monetary policy. The amount requested is \$2,250. Is it the pleasure of the committee to adopt this budget?

Some hon. members: Agreed.

• (1300)

[*Translation*]

The Chair: Perfect, thank you.

[*English*]

Is it the will of the committee to adjourn?

Some hon. members: Agreed.

The Chair: Thanks. Have a great day, everyone.

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