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**EVIDENCE**

## Thursday, May 1, 2014

## Chair

**Mr. James Rajotte**

# Standing Committee on Finance

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● (1530)

[*English*]

**The Chair (Mr. James Rajotte (Edmonton—Leduc, CPC)):** I call this meeting to order. This is meeting number 31 of the Standing Committee on Finance. Orders of the day, pursuant to the order of reference of Tuesday, April 8, 2014, are the study of Bill C-31, an act to implement certain provisions of the budget tabled in Parliament on February 11, 2014 and other measures.

We have with us, I believe, half the public service in Ottawa here in the room.

**Voices:** Oh, oh!

**The Chair:** We want to welcome all the officials, and thank them so much for spending this afternoon with us, and obviously the rest of the sessions on the budget bill.

Right now at committee, seated before us, we have Mr. Ted Cook from the Department of Finance who's been here many times. Welcome back to the committee, Mr. Cook. Also, we have Mr. Miodrag Jovanovic. Welcome to the finance committee.

Colleagues, we obviously have a very comprehensive bill to get through over this day and Tuesday with the minister as well. We have six parts to this bill, so I'm proposing to start with, obviously, part 1, moving through to part 6. As well, I'm proposing that we follow our normal question rotation, so we'll start with the NDP and move to the Conservatives, then Liberal, Conservative, and successively through the rest of the rotation, proposing seven-minute rounds, at least for the first round. We can move to five-minute rounds later.

I'm asking that you focus in particular on the items you want to highlight and get officials on the record. You and your staff have all had a briefing on the bill prior to this. You also have the full document from the Department of Finance, which has been provided, as well as the document from the Library of Parliament.

I'm proposing to start with the NDP on their round, and if members wish to have an overview of a certain section, they can point to that. But I'll just highlight for members, if they ask for an overview of part 1, it will likely take a 30-minute overview, so that will likely take up an awful lot of question time.

We will start with the NDP, and Mr. Cullen first, please.

**Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP):** Thank you, Chair.

I have a brief comment. Mr. Caron will be taking most of our time on part 1 through part 4, where we will hopefully spend less of our time, with a significant amount of our interest. I say this for our officials, as it is good to have half the civil service with us here today, and we appreciate your being here. The sections on FATCA, certainly a large treaty with our largest trading partner, the Americans, preoccupies us a great deal, as well as the rather extensive sections in part 6 that encompass....

The challenge we have, Chair, as we've spoken about, is that with such a massive omnibus bill, is being able to have the committee properly understand all the implications. As we've seen, there have been problems with previous omnibus legislation whereby unintended consequences seem to be part of the day, and future omnibus bills fix mistakes in previous omnibus bills. So we're looking to help the government here a little. They've thrown everything but the kitchen sink in this one, and we'll get right through it with Mr. Caron, and I'll come in on a section in part 2.

Thank you, Chair.

**The Chair:** We'll appreciate your assistance on this.

**Mr. Nathan Cullen:** I'm sure they will, every comment we make.

[*Translation*]

**The Chair:** Mr. Caron, please go ahead.

**Mr. Guy Caron (Rimouski-Neigette—Témiscouata—Les Basques, NDP):** Thank you very much, Mr. Chair. Do I have five or seven minutes?

[*English*]

**The Chair:** You have six minutes now.

[*Translation*]

**Mr. Guy Caron:** Thank you.

Mr. Cook, I, too, want to welcome you to the committee.

I have a few questions for you on part 1. If I run out of time, I may be able to come back to those.

My first question is about offshore taxes, which, if I am not mistaken, involve parts 1, 2, 3 and 4. I am referring to the informant program.

Another similar program is in place, the informant leads program. Budget 2014 and the budget bill introduced the offshore tax informant program.

What's the difference between the offshore tax informant program and the informant leads program? Why would an informant use one program over the other?

● (1535)

[*English*]

**Mr. Ted Cook (Senior Legislative Chief, Tax Legislation Division, Tax Policy Branch, Department of Finance):** Sorry, I'm not familiar with the other program. Is there one that's not in part 1, 2, 3, or 4?

[*Translation*]

**Mr. Guy Caron:** The budget bill establishes the offshore tax informant program. According to the Canada Revenue Agency, however, a similar program already exists; it's called the informant leads program. The name of the program in English is the informant leads program.

What's the difference between the two programs? Why would an informant use one over the other?

[*English*]

**Mr. Ted Cook:** I think I know the program you are talking about, the existing program with CRA, so I'll explain a little bit about that. Then, I'll explain in more detail the OTIP, which is actually contained in the budget.

The Canada Revenue Agency currently has what they call the leads program, which is voluntary disclosure of tax non-compliance that people do on a voluntary basis. There's no kind of monetary reward or particular system set up around the management of it. Because it is purely voluntary and there's no kind of reward, it has not been extensively utilized. Obviously, the expectation is that if you provide an incentive, you would be more likely to get a greater response. If you would like, I can spend a little bit of time talking about the offshore tax informant program and how it's set up. You'll see that it's different from what is essentially a voluntary line, where people can call in if they have particular instances of non-compliance they want to identify.

With respect to the offshore tax informant program, it's different in a number of ways. First, it only relates to tax non-compliance of federal taxes in excess of $100,000, so instances of non-compliance of that order is what the program relates to. As well, there has to be an international component to the non-compliance that's identified, which can be income earned offshore or assets that are transferred offshore that relate to taxable income earned in Canada.

Under this program, the CRA can enter into a contract with someone who will potentially receive a payment of between 5% and 15% of taxes collected, and they'll only get that amount once all appeal rights have been exhausted.

[*Translation*]

**Mr. Guy Caron:** Do you have an idea of how the program performed or what benefit it had?

And by creating the new program, does the government intend to get rid of the informant leads program?

[*English*]

**Mr. Ted Cook:** I'm unaware of any intention by the CRA to eliminate the leads program. As I've indicated, the new program only relates to more significant tax non-compliance and taxes in excess of $100,000 that have an international component. Those are not limitations under the leads program.

Under the leads program, my understanding is that somewhere in the order of around 10% of the leads provided actually result in assessments. The hope is that by having a more rigorous relationship with the informant, it will increase the number of assessments that result.

[*Translation*]

**Mr. Guy Caron:** I have a couple of other questions about something else, but I will wait until the other committee members have finished.

[*English*]

**The Chair:** Thank you.

Mr. Saxton, go ahead please.

**Mr. Andrew Saxton (North Vancouver, CPC):** Thank you, Chair. Thank you to our witnesses for being here today as well.

My first question is regarding the Foreign Account Tax Compliance Act, more commonly known as FATCA.

**The Chair:** That's part 5, Mr. Saxton. We're on—

**Mr. Andrew Saxton:** I can't do part 5.

● (1540)

**The Chair:** No.

**Mr. Andrew Saxton:** I thought we were doing 1 to 6.

**The Chair:** No, we're starting at part 1 and then we'll move through to 6.

**Mr. Andrew Saxton:** Okay, then I will change my question.

I will ask a question regarding the mineral exploration tax credit for flow-through share investors. Coming from the province of British Columbia as I do, the mining industry is a large part of our economy. In fact, mining is extremely important to the Canadian economy as a whole, including the northern and rural communities. In fact, I understand that 80% of global mining companies are listed on the TSX here in Canada.

Underlining how important this sector is to our economy, our government has offered support for these job-creating businesses with the mineral exploration tax credit, which is renewed in economic action plan 2014.

Can you please explain how the mineral exploration tax credit helps businesses in Canada and how this important tax credit works?

**Mr. Ted Cook:** I'm happy to do that.

With respect to the mineral exploration tax credit, it relates to flow-through share investors. Under a flow-through share investment agreement a person can purchase shares from what's generally a junior mining company. Junior mining companies very often do not have enough revenue to fully offset their expenses, so under a flow-through share agreement those expenses can be renounced by the junior mining company to the flow-through share investor. The expenses that are eligible to be renounced relate essentially to greenfield exploration—prospecting; sampling; geophysical, geothermal, and geochemical analysis; and those sorts of things.

Expenses can be renounced to the investor up to the amount of the share investment, and then the mineral exploration tax credit provides a 15% credit on the amount of expenses that are renounced to the shareholder. To fully take into account the effect of the fact that expenses are renounced and are deductible by the individual investor, as well as having a 15% tax credit, in the year following the year in which the claim is taken, there is an income inclusion in respect of the amount of the credit.

Certainly a number of industry associations have indicated the importance of this credit to their prospecting activities. In particular, I had talked about junior mining companies. It's of particular importance to them. As I indicated, they may have mining exploration expenses that they're not able to take into account in computing income tax.

**Mr. Andrew Saxton:** Thank you.

Our government introduced the volunteer firefighters tax credit a few years ago. This was to recognize those Canadians who put their lives at risk on a regular basis to help save the lives of other Canadians. We've also now expanded that to include the volunteer search and rescue Canadians as well.

How is it going to work? In my riding of North Vancouver we have a unit called the North Shore Rescue, whose members put their lives at risk every day to help save the lives of other Canadians. How is this new tax credit going to work to the benefit of those volunteer Canadians who put their lives at risk?

**Mr. Ted Cook:** With respect to the search and rescue volunteer tax credit, if an individual provides 200 hours or more of eligible search and rescue volunteer services and the services are provided to an eligible search and rescue organization, then that individual will be able to claim a non-refundable tax credit that is based on the amount of $3,000. So the credit would be 15% of that, or approximately $450.

There are two things I would highlight for the committee. If an individual is performing both volunteer firefighting services and volunteer search and rescue services, those hours can be aggregated for the purposes of either credit. So if an individual has 100 hours of search and rescue volunteer activities and 100 hours of volunteer firefighting activities, then an individual would be eligible for the credit.

But I would also note that any particular taxpayer will be eligible for only one of the credits. If someone performed 400 hours of service they would choose whether they wanted to claim the volunteer firefighters tax credit or the search and rescue volunteers tax credit.

● (1545)

**Mr. Andrew Saxton:** Thank you, Chair. I have no further questions.

**The Chair:** Thank you very much, Mr. Saxton.

We'll go to Mr. Brison, please.

**Hon. Scott Brison (Kings—Hants, Lib.):** Thank you, Mr. Chair.

I'd like to follow on Mr. Saxton's questions on the volunteer tax credits. These credits exclude many deserving volunteers who put their lives at risk and incur costs as volunteers, because they're non-refundable tax credits. There are a lot of volunteers in both search and rescue and in volunteer fire departments who do not make enough money to actually benefit from these as a non-refundable tax credit.

I would like you to confirm another issue. Someone who is both a search and rescue volunteer and is also a volunteer firefighter must choose between these two tax credits. They can't claim both credits in the same year. Is that accurate?

**Mr. Ted Cook:** I'll just answer your second question first. My colleague can respond to your first question.

That is exactly right. Even if they do have 200 hours of search and rescue volunteer hours of service, plus 200 hours of volunteer firefighting, they would only claim one credit.

**Hon. Scott Brison:** On the non-refundable nature of this tax credit, have you examined how much it would cost to extend this benefit to low-income volunteers by making it refundable?

**Mr. Ted Cook:** With respect to refundability, I would first note that refundable tax credits are used in very limited circumstances in our income tax system, when there is a clear policy rationale to do so. The working income tax benefit, for instance, is refundable because it is directed at low-income individuals.

The intention is to create an incentive for these people to enter or stay in the labour force, so it makes sense that this credit be refundable. Otherwise, when credits are there to recognize specific expenses or a reduced ability to pay tax, or specific circumstances of taxpayers' situations, then these credits are generally non-refundable. That's the general policy.

**Hon. Scott Brison:** You're saying that WITB is refundable because it's aimed at low-income, so the volunteer tax credits described are not aimed at low-income.

**Mr. Miodrag Jovanovic (Director, Personal Income Tax, Department of Finance):** The policy objective is different.

**Hon. Scott Brison:** It's to exclude—

**Mr. Miodrag Jovanovic:** It's not targeted to low-income individuals. The intention is not to provide income support, or in the case of the working income tax—

**Hon. Scott Brison:** But it does provide income support to people who make enough money to qualify.

**Mr. Miodrag Jovanovic:** The objective is to recognize these individuals by providing a tax relief, so a reduction in a tax liability basically.

**Hon. Scott Brison:** Do low-income volunteer firefighters not deserve the same recognition as volunteer firefighters who make enough to qualify? Is that the public policy rationale?

**Mr. Miodrag Jovanovic:** To the extent that the objective is to reduce tax liability. If these individuals already have a tax liability that is nil, then—

**Hon. Scott Brison:** Has the department done any analysis on how this plethora of non-refundable tax credits actually may be contributing to greater inequality by excluding low-income Canadians?

**Mr. Miodrag Jovanovic:** I'm not aware of any specific study done on that.

**Hon. Scott Brison:** On minerals, to follow on Mr. Saxton's question on the flow-through share tax credit, what is the rationale for extending this tax credit? It's been around for a long time. What's the rationale for extending this on a one-year basis over and over again? It doesn't seem to make a lot of sense.

The fact that 80% of mining financing in the last 10 years was transacted in Toronto, not that there has been a lot of mining financing in the last couple of years, but wouldn't it make more sense just to put it in place for a longer period of time as opposed to every year? What's the public policy rationale for doing it every single year?

**Mr. Miodrag Jovanovic:** Certainly, the decision to invest or not by investors and by mining companies is based on a whole host of factors, some of which are not connected to the tax system. I can only respond to this year's extension to it. You're quite right. It has been annually extended since, I believe, 2007.

With respect to the extension of this year, the overall sector has been fairly strong, but there have been recent drops in certain commodity prices with respect to base and precious metals that supported the continuation of this particular credit.

**Hon. Scott Brison:** For the pension transfer limits, can you provide us with some examples of situations where the new rule might kick in?

**Mr. Ted Cook:** With regard to the pension transfer limits, under the current rule it requires two main things of importance. One is that the employer is insolvent and also that the pension plan is being wound up. That will no longer be required if the reduction in the pension benefits is allowed under the relevant pension standards legislation.

An example would actually be where the pension plan is not being wound up, where they're trying to save the pension plan and if people are transferring out, then the non-reduction, if you will, of the transferable amount is potentially applicable.

● (1550)

**The Chair:** You're right up against your seven-minute time.

**Hon. Scott Brison:** Okay, so we'll come back.

**The Chair:** Thank you.

We'll go to Mr. Allison, please.

**Mr. Dean Allison (Niagara West—Glanbrook, CPC):** Thank you very much, Mr. Chair, and thank you to our witnesses.

I had the opportunity to sit as the founding board member of the Dave Thomas Foundation for Adoption, and there are a number of things that the organization has done in Canada. Some of it has been surveys in terms of trying to find out attitudes on adoptions. I just note that they commissioned the Canadian foster care adoption attitudes survey to try to determine what some of the issues are and how we could get more kids adopted.

We found out that there are some 30,000 kids in foster care, which is always a challenge, in and out, and that if only 0.5% of people who are thinking about adopting actually adopted, we'd have all those kids out of foster care. However, one of the things that was discovered was the cost of actually being able to adopt kids. I know that we have the adoption expense tax credit. I know that's great, but could you guys explain exactly how that will work in terms of the cost and how it differs from where we are now?

**Mr. Ted Cook:** Sure. Maybe my colleague might make some further comments on the particular credit itself, but the change that's being proposed in this bill is actually fairly simple. The adoption expense tax credit is a non-refundable credit that's indexed to inflation each year and without this amendment the expense limit for the credit would be on the order of about $11,800. So what this measure would do is simply increase that $11,800 to $15,000 for this year and because it is an indexed credit, then it will increase with inflation year after year.

So that's fairly straightforward. In terms of dealing more generally with your question, I'd also note that in economic action plan 2013 the period for which expenses can be eligible for the credit was extended to start the adoption period earlier in certain cases.

So I think all those are just additional removals of disincentives to adoption, if you will, relating to the cost of adoption.

**Mr. Dean Allison:** I understand the tax credit works based on income. So what kind of tax savings then can this mean to an individual family if they were able to push up against the $15,000 limit?

**Mr. Ted Cook:** I'll just address that briefly. What it does, because non-refundable credits are creditable at 15%, is it offers approximately $500 in tax relief.

● (1555)

**Mr. Dean Allison:** Thank you very much. I'm going to turn it over to Mr. Keddy.

**The Chair:** You have four minutes.

**Mr. Gerald Keddy (South Shore—St. Margaret's, CPC):** Thank you, Mr. Chairman. Welcome to our witnesses.

I want to revisit the search and rescue volunteers tax credit and the volunteer firefighters tax credit for a second. It was my understanding that the changes to this tax credit will allow someone who does both, participates in search and rescue and is a volunteer firefighter, to actually combine hours. If they have 100 hours of search and rescue and 100 hours as a volunteer firefighter, they will qualify for the credit.

In most of rural Canada, many of these search and rescue volunteers and volunteer firefighters may not get their full 200 hours of volunteer time. So this opens this credit up to a tremendous number of volunteers. Do we have a real number or do we have an estimate of how many more people will qualify under these changes?

**Mr. Miodrag Jovanovic:** Our estimate is based on what we could observe of the number of members currently in the air, ground, or marine search and rescue associations, which is roughly about 19,000 individuals. We don't have much information to determine what's going to be the take-up from there, but that's the primary figure basically.

**Mr. Gerald Keddy:** So potentially we could have another 19,000 volunteers across Canada eligible for a tax credit who were never eligible prior to this.

**Mr. Miodrag Jovanovic:** Potentially.

**Mr. Gerald Keddy:** Excellent.

I have a question on 4(b), on mobile offshore drilling units.

We've worked as a government to reduce the corporate tax rate and reduce the small business tax rate. In economic action plan 2014, we've built on those measures by eliminating the 20% most favoured nation rate on mobile offshore rigs.

The challenge, when looking at this—

**The Chair:** Mr. Keddy, that's not part 1.

**Mr. Gerald Keddy:** It's 4(b). You said one to four.

**The Chair:** We're doing part 1.

This is how the officials are being presented to the committee. This is part 1.

**Mr. Gerald Keddy:** I apologize, Mr. Chairman. We're stuck on one system here.

I'll back up to—

**Mr. Nathan Cullen:** [*Inaudible—Editor*]

**Voices:** Oh, oh!

**Mr. Gerald Keddy:** We're trying to move ahead, and I'm losing time as I'm talking.

On the medical expense tax credit, can you explain what measures will be eligible under the proposed amendments in this year's budget? Who is eligible to claim the medical expense tax credit? How much has it expanded?

**Mr. Ted Cook:** The medical expense tax credit has changed in two ways under this bill. The first is to add service animals for people with severe diabetes. They are called diabetes alert dogs. The cost of acquiring these dogs, the associated training and travel, and the care and maintenance of these dogs will be eligible for the medical expense tax credit. These dogs can actually, through scent, determine changes in the blood sugar levels of individuals and alert them that is occurring.

The second part of the measure is to allow the medical expense tax credit to be available in respect of what we call individualized therapy plans. There are certain plans of therapy that are currently eligible for the medical expense tax credit, but sometimes to undertake these therapies a plan has to be developed in the first instance. This measure would ensure that the development of these plans, which relate to therapy that is itself eligible for the medical expense tax credit, will also be eligible.

In terms of the quantum, there are not very many of these dogs coming into Canada yet.

**The Chair:** Okay. Thank you.

Thank you, Mr. Keddy.

Just to explain—sorry, colleagues, I thought I was clear about this—the reason for doing it this way is that we have different officials who will come to address different parts and divisions of the bill. We can't keep swapping people in and out at the table. That's why we're proceeding in this fashion.

We'll stick with part 1.

We'll go to Mr. Cullen, please.

● (1600)

**Mr. Nathan Cullen:** Thank you, Chair. I'll keep my questions brief.

I want to get back to the flow-through share tax credit for mining. I represent a resource-rich part of the country, in northern British Columbia, and this is an important issue.

I have two principle questions.

The last time you presented, Mr. Cook, and again today, you talked about the association of other factors. Regarding the effect of the tax credit, we see tax credits that help with efficiency and also produce results.

Has the department done a study as to what the impact has been over these—what is it?—seven years of renewal on this particular tax credit to understand what the impact has been for the mining exploration economy?

**Mr. Ted Cook:** There are two ways to answer your question, and I can only provide information relating to one.

In terms of the actual take-up and application of the credit itself, in 2012, the last year for which we have data, approximately 350 companies issued flow-through shares. They were applicable in respect of between 30,000 and 40,000 individual investors. They raised about $750 million through these shares to be applicable for investment.

I think maybe the other question is about what the margin is. I don't have a figure that I can provide to you as to the marginal impact.

**Mr. Nathan Cullen:** I don't know if we're using the same terminology here. It's less so on the margin and more on the broader economic impact.

We're trying to understand the effectiveness of tax credits. With any program that is run by the department, it's to understand what the resulting activity would be in the absence of that program. On mining exploration, the idea, I believe, of this particular program, is to incentivize exploration that otherwise would not have happened because of, say, depressed mineral prices or a cooling investor climate.

Am I right so far in my understanding of this program?

**Mr. Ted Cook:** It's generally correct.

**Mr. Nathan Cullen:** Generally correct....

Again, has the department endeavoured—and I don't offer this as a critique, more just an understanding—to have any sort of a study as to what the result would be in the absence of such a program? Should the program be augmented? Should the program be made permanent?

As Mr. Brison pointed out, the renewal after renewal, for some of the companies I've spoken to, causes some concern. These companies don't just work on an annual basis, as you can understand. They do an exploration season, but that is usually connected to at least three or four seasons strung together. To be able to plan in light of not knowing what the revenue take-up will be from the market is difficult.

Does the department have a study of the effectiveness of the tax credit? Has it contemplated making it a permanent program?

**Mr. Ted Cook:** For every measure, there's a decision that's taken as to whether or not to continue to do it, to not do it, or to change it in some fashion. I can only speak to the fact that the government has decided to continue this credit on an annual basis.

I'm not aware of any study to look at the specific kind of impact that you're talking about. In terms of evaluating the utility of credits, the department also relies on input from stakeholders and certainly there's been enough of that.

**Mr. Nathan Cullen:** To be explicit then, do you study the effectiveness of other tax programs, industrial-focused tax programs like this? Does the department ever take on the assessment whether from stakeholders or internal data or Stats Canada data? Do you do this? Or is it something that you don't do? Do you leave it to the AG or the PBO or other groups to analyze effectiveness?

**Mr. Ted Cook:** The department conducts a whole host of studies. I think I would be getting out of my depth as the senior legislative chief here to explain these particular tax measures to start talking generally about the kind of economic analysis the department undertakes.

**Mr. Nathan Cullen:** It's a curiosity for me. As the last piece, and I'll leave off on this, you've mentioned several factors that go into this particular assessment as the department decides whether to renew, end the program, or even contemplate making it permanent. You mentioned pricing of metals and the recent depression in metals. Are there any other factors that you consider within the department when the renewal of this tax credit is being debated?

**Mr. Ted Cook:** In terms of how this credit is assessed, there are the relevant commodity prices and there's the global strength of the industry and the levels of investment that are being undertaken by firms in the industry, which we would think of as the general economic conditions applicable.

● (1605)

**Mr. Nathan Cullen:** Thank you, Chair.

**The Chair:** Thank you.

Thank you, Mr. Cullen.

Part 1, Mr. Allen....

**Mr. Mike Allen (Tobique—Mactaquac, CPC):** Thank you very much, Mr. Chair.

I'd like to ask a few questions with respect to unlegislated tax measures. The first question is this. Does Finance keep a running record of these measures, and if so, and I'm assuming you do, how many unlegislated measures are still out there given there was about a 983-page catch-up bill after 10 years that was done about a year or so ago. Can you answer that?

**Mr. Ted Cook:** In terms of the unlegislated tax measures, just to explain.... When we talk about specific legislated proposals, certainly the Department of Finance keeps a public listing on its website of draft legislation that has been released for comment or provided to the public. So there is a listing on the website of all our proposals. You're quite right, there was a bill of close to 1,000 pages that was enacted just last year. Certainly we've done a lot in terms of dealing with what you would consider the legislative backlog.

I guess the one figure I would note that we've looked at recently is this. When they audited the Department of Finance back in 2009, the Office of the Auditor General indicated that there were approximately.... It identified 400 technical amendments of which 250 were outstanding comfort letters. In terms of those comfort letters, there's I believe less than 10 that have not been either enacted or otherwise dealt with or released in draft.

In terms of legislation that we currently have outstanding, there are a couple of budget measures from 2012 that we've been doing consultation on—bank base erosion, life insurance policy exemption. But certainly we've been working, as I'm sure this committee knows, very hard to get up to date.

**Mr. Mike Allen:** My next question is with respect to the way the legislation is worded. It would contemplate a first report that would be tabled in the House of Commons in 2014, this fall, and then given there will be an election in 2015 in October, that means obviously the reporting period wouldn't be in line with the next reporting period.

So would the next report of this come immediately when the House is brought back into session after the 2015 election? This is going to be a two-part question. The second one would be, given that it will be a different mandate of a government at that point in time, does that mean the next report would be in 2017 or 2018?

**Mr. Ted Cook:** Without a chart in front of me, I always get sort of lost in the years, but to give a kind of overview, the proposed amendments to the Financial Administration Act that you're talking about essentially would require legislative proposals to be tabled that have been made more than 18 months prior to that October. There would be no obligation to table if there were no legislative proposals meeting that criteria, which would likely be the case in the first year of a new government.

What the measure would do is require legislative proposals that had been announced but not enacted during that period to be listed in Parliament. Again, that's just to give greater transparency as to the progress of tax legislation. Obviously, a tax is kind of special in the sense that usually it has an effective date as of announcement, as opposed to when it's finally enacted.

**Mr. Mike Allen:** Third, in proposed subsection 162(3), there's an exclusion if there's a general intention to develop a specific legislative proposal. How would you see that kind of general intention, let's call it, actually playing out in fact?

**Mr. Ted Cook:** The purpose of the legislation is to assist Parliament, taxpayers, and the CRA with legislative proposals that are usually coalesced enough such that taxpayers will order their affairs based on those legislative proposals, and the CRA will begin administering based on those.

What we didn't want to do was.... I'll give you an example. In economic action plan 2014, there are consultations relating to tax planning by multinational corporations, where there is an intention to develop a proposal but we're at the consultation stage, or the proposal hasn't coalesced enough to be an identifiable legislative proposal that taxpayers might be relying on. The idea was that those would not be appropriately reportable. In fact, it might be less helpful—just the fact that the government is consulting on something—if that were to be included in a list of outstanding tax measures.

● (1610)

**Mr. Mike Allen:** Thank you, Chair.

**The Chair:** Thank you, Mr. Allen.

Colleagues, the next person I have is Mr. Brison, who has some questions, so unless...?

Okay. I'll go to Mr. Brison.

**Hon. Scott Brison:** I'd like to go to donations of certified cultural property. This measure, I understand, is the result of concerns with tax promoters who are abusing the system. Can you tell us about that and how this measure will fix it or could fix it?

**Mr. Ted Cook:** Yes, certainly. The Income Tax Act has a provision that in certain circumstances where property is acquired and then subsequently donated to a charity, the fair market value of the property for purposes of the charitable donation tax credit will be the lesser of the cost of the property and its fair market value. This will apply where the property is acquired as part of a tax shelter, or when the property is given to a charity in a short period, within less than three years, or I believe it's 10 years if it can be reasonably concluded that one of the purposes of the arrangement is to obtain the tax benefit. There's an exception from that rule that currently exists for certified cultural property.

The concern is that certified cultural property could start to be targeted by tax promoters engaging in what are essentially sort of "buy low and donate high" schemes, where you would buy at one price, say $300,000, and then have it as certified cultural property at $100,000—there's the valuation which is certified by the board—and then donate at that value.

**Hon. Scott Brison:** At a Sotheby's or a Christie's or something like that, price would be accredited in terms of being able to provide a price on one of these assets...?

**Mr. Ted Cook:** Well, there are two responses to that. For the way it currently works for the review board that certifies the cultural property, at the time they give the certification, they'll actually certify the fair market value of it. Now, to assist the board in doing its certification, there will be an independent appraisal provided by the person who is seeking the certification. Currently, for the majority of the time, the appraisal provided to the board will be accepted by the board. I think the concern, at least partly, is that this puts a lot of pressure on the board with respect to due diligence around the appraisal.

Now, I would note that this amendment only applies to certified cultural property that is donated as part of a gifting arrangement that's a tax shelter, so there are certain requirements around representations and whatnot. It shouldn't affect other gifts of certified cultural property.

**Hon. Scott Brison:** [*Inaudible—Editor*]...about punishing legitimate donors or reducing their incentive to donate cultural property?

**Mr. Ted Cook:** As I just mentioned, this exception to the exception, if you will, that we're putting in only applies to gifting arrangements that are part of a tax shelter. To qualify as a gifting arrangement that is a tax shelter, there have to be statements and representations with respect to the tax benefits that will be given. So in the case of someone who actually has property they've just acquired and at some point they decide they want to donate it, then this measure would not apply to them. So we don't think it will affect the genuine type of donations that you are talking about.

**Hon. Scott Brison:** I'd like to move on to combatting tax noncompliance. This measure expands CRA's ability to share information with FINTRAC. What kind of new information will be shared that doesn't include the personal information of Canadians?

● (1615)

**Mr. Ted Cook:** I'll just situate that amendment. Currently FINTRAC can provide information to the CRA for its enforcement purposes, if certain criteria are met. So it has to be relevant for FINTRAC purposes, and it has to be related to certain CRA purposes. What this measure does is allow CRA to provide information back to FINTRAC relating to how useful the information provided was.

**Hon. Scott Brison:** To be clearer, does it include personal information on Canadians?

**Mr. Ted Cook:** It could, potentially—for example, if someone was convicted of tax evasion and they wanted to let FINTRAC know that was in fact the result of the information that was provided.

**Hon. Scott Brison:** What limits are in place to prevent FINTRAC from further sharing that information? Can FINTRAC, for instance, share it with any organizations outside of government? Can they share it with other countries?

**Mr. Ted Cook:** I'll just turn to the exact provision because really we're talking about information that FINTRAC provided to the CRA in the first place.

I'll just flip to the exact provision. I would just note that the actual amendment provides that it's to an official of FINTRAC "solely for the purpose of enabling the Centre to evaluate the usefulness of information provided by the Centre". So it's solely for that purpose. The underlying information that was provided in the first place is FINTRAC's information.

**Hon. Scott Brison:** Okay.

I have a question on the offshore tax informant program. This program was launched in January 2014. How much money is this program expected to bring in? Has the government set any targets? Budget 2013, which announced the program, didn't include any estimates.

**Mr. Ted Cook:** I think in fact there are no specific targets as yet with respect to the amount of money to be brought in. There is some experience with the U.S. having its own programs. In at least one of their programs they have raised between $93 million and $250 million a year on their program since 2006.

**Hon. Scott Brison:** For Canadians following this committee today, there may be some questions about the state supporters of terrorism and which countries this measure would apply to. But also, what is the process of adding a country to the list as a supporter of terrorism?

**Mr. Miodrag Jovanovic:** I can't really talk about the process of that act because I'm obviously not an expert in that domain. But what I can tell you is that there is already a robust legal framework for addressing terrorist financing and a very strong legislation regulating charities that protects the sector from potential abuse. Obviously terrorist financing is a complex and multi-faceted issue, and that framework already includes legislation including the Criminal Code, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, and the Special Economic Measures Act.

What this measure in the budget does is add another piece of legislation to that tool box, if you will. But I cannot really talk more about the process for listing these countries under that act.

● (1620)

**The Chair:** Thank you.

Your time is up, Mr. Brison.

I'm going to move to part 2.

I will thank our two officials, and I believe we'll be asking Mr. Mercille to come forward, please.

Part 2 includes amendments to the Excise Tax Act, other than GST/HST measures.

Welcome, Monsieur Mercille. We'll let you get settled here.

We'll start with Mr. Cullen, please.

**Mr. Nathan Cullen:** Thank you, Chair.

I'll keep this incredibly brief. It's not a question for Mr. Mercille, just more a position on our processes.

Mr. Keddy was asking about or learning about how we're doing here today. Our preoccupation is that our ability to get through parts 5 and 6 around FATCA and certainly the details of almost 30 sections in part 6.... The opposition is not going to ask any questions on part 2 to enable as much time as possible for the committee to get into some of the more complex parts of this omnibus legislation. We'll leave it at that, but we have some worries about our process here this afternoon, as you are always concerned with and aware of time.

**The Chair:** Okay, thank you.

I have Mr. Keddy, and, colleagues, we have four hours in total with officials and the minister, so if you can, be very brief in our questions and answers to get through everything.

We'll go to Mr. Keddy.

**Mr. Gerald Keddy:** Mr. Chairman, relative to Mr. Cullen's statement, we're in agreement, so I'll refrain from my question.

**The Chair:** Okay.

Mr. Brison, any questions on part 2?

**Hon. Scott Brison:** Yes, I do have questions on part 2, starting with the GST/HST in the health care sector.

This exemption for services provided by acupuncturists and naturopathic doctors is only available in certain provinces. In which provinces are Canadians not able to benefit from this measure?

**Mr. Pierre Mercille (Senior Legislative Chief, GST Legislation, Department of Finance):** I'm going to correct you. The exemption applies across Canada for both the GST and the HST. Maybe I can explain why there's confusion here.

There are administrative criteria that are used to decide which health care professions would benefit from the exemption, and one of those criteria is that the profession is regulated as a health care profession in at least five provinces. When that criteria is met, usually an association will make representations to the government asking to be exempt, and then a decision to exempt will be made by the minister. Once it's exempt, it's exempt across Canada.

**Hon. Scott Brison:** Which provinces currently—

**Mr. Pierre Mercille:** Oh, you want to know which ones—

**Hon. Scott Brison:** —would not benefit because of the provincial regulatory differences?

**Mr. Pierre Mercille:** No, they will all benefit.

The way it works is that we list acupuncturists or naturopathic doctors, and they have to be regulated in a province, but as I say, the exemption will apply across Canada. If an acupuncturist is in a province that has no regulation, as long as they meet the qualification to be regulated in another province, that would be good enough to benefit from the exemption.

**Hon. Scott Brison:** Thank you.

To go on to GST and HST on paid parking, the measure to charge these taxes on parking provided by charities in cases where 90% or more of the parking is usually provided for free.

I recall there was a similar provision for public sector bodies in Bill C-4. I understand that measure resulted from a tax dispute with a number of municipalities, where about $50 million or $60 million of revenue was at stake. Have there been any tax disputes with charities regarding this measure, and if so, how much money was at stake?

**Mr. Pierre Mercille:** We're not aware of any. It was made to be uniform across the board.

**Hon. Scott Brison:** Okay. That's all for part 2.

**The Chair:** That's it for part 2? Okay.

Thank you very much, Monsieur Mercille.

I'll just ask, colleagues, are there questions for part 3, amendments to the Excise Act, 2001? There are questions. Okay, we'll bring the official forward for part 3.

[*Translation*]

Mr. Coulombe, welcome to the committee.

[*English*]

I'll start with Mr. Keddy.

● (1625)

**Mr. Gerald Keddy:** Thank you, Mr. Chairman.

I have one very brief question on tobacco products. I think most of the countries have plotted initiatives to increase tax on tobacco and apply them on tobacco products, those taxes straight across the board on tobacco products.

Do we have any reasonable idea on how much revenue is actually expected to come from the increased tax on tobacco?

**Mr. Gervais Coulombe (Chief, Excise Policy, Sales Tax Division, Department of Finance):** Thank you for the question.

Actually, if you take the budget documentation that was released on February 12, I think on page 319, you will have the details per year of the increased revenues. They amount to about $3.3 billion over the next five years, plus the two months of the last fiscal year.

**Mr. Gerald Keddy:** Perfect, thank you.

That's it.

**The Chair:** Thank you very much, Mr. Keddy.

Mr. Brison, please.

**Hon. Scott Brison:** Following on Mr. Keddy's question on taxation on tobacco, in the past, high tobacco taxes contributed to a significant growth in the underground market for cigarettes. When the government announced these measures in budget 2014, they also announced money to fight contraband tobacco. Page 237 of budget 2014 shows that there will be $45 million spent to fight contraband tobacco over the next two years.

How much of the $45 million is new money, and if it's not new money, what was the original purpose of the funds? How much money is coming from existing RCMP budgets?

**Mr. Gervais Coulombe:** Thank you again for the question.

These kinds of spending questions unfortunately fall outside my area of expertise as we are responsible for the enactment of the Excise Act of 2001, the legislative amendments that make it possible to have the duty increase in place. However, my understanding is that a similar question was addressed in the previous briefing. We could surely follow up internally with our parliamentary staffers to ensure that the appropriate response is provided. I do not have with me any details in terms of what that $91.7 million over five years or the other profile over two years of funding to the RCMP that you were referring to.

**Hon. Scott Brison:** Remember to get back to us in a timely manner. Earlier in the week would be helpful, given the timing of this.

The concern is that if the money is actually coming from the existing RCMP budget, the RCMP have faced significant cuts, $195 million to its actual budget. The Auditor General is already concerned that the RCMP cannot meet existing obligations without new funding.

So setting aside say $20 million per year while $195 million per year is getting cut doesn't necessarily help the RCMP meet additional responsibilities that could result from the unintended but highly likely consequence of a growth of an underground market for cigarettes as a result of these taxes.

That's it for part 3.

**The Chair:** That's it for part 3. Okay. Thank you.

[*Translation*]

Thank you, Mr. Coulombe.

[*English*]

I'll just ask colleagues, does anyone have any questions on part 4, customs tariff?

**Mr. Gerald Keddy:** I just have one question.

**The Chair:** One question...? Okay. We'll ask the two officials to come forward.

We have Mr. Halley.

[*Translation*]

We also have with us Mr. Tousignant. Welcome.

[*English*]

Thank you for being with us here today.

We'll go to Mr. Keddy first then please.

**Mr. Gerald Keddy:** Thank you, Mr. Chairman. I started this question earlier, but it was in the wrong spot of the discussion.

The elimination of the 20% most favoured nation rate of duty on mobile drilling rigs at a time when there was a scarcity of oil rigs worldwide should assist more offshore drilling for gas and oil in Canada, without question. But the link is to small business and the supply of those oil rigs.

Do we have any hard numbers or any theoretical numbers even, on how much assistance this will give to small business, specifically in the service industry?

● (1630)

**Mr. Patrick Halley (Chief, Trade and Tariff Policy, Department of Finance):** Sure. As the budget mentioned, this measure lowers business costs for offshore exploration by about $13 million annually. There are also spinoff benefits. The industry has indicated that over the last four years in Canadian shipyards, there was repair work or maintenance work done on these rigs when they came into Canadian waters.

That's about $40 million a year, on average.

**Mr. Gerald Keddy:** Okay.

Thank you.

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

Mr. Brison, please.

**Hon. Scott Brison:** Thank you, Mr. Chair.

The one area I'm interested in here is the tariff classification of certain imported food products. I understand that the measure in clauses 91 and 92 is in response to certain pizza products.

Could you explain this to us?

**Mr. Patrick Halley:** Sure. Clauses 91 and 92 clarify the tariff classification of certain food products that contain cheese, a product that falls under the supply management system for certain agricultural products and that is subject to high duty levels. The clarification addresses a gap whereby certain imported goods were packaged in a deliberate manner solely to circumvent the current tariff structure, which has, as I said, very high supply management tariffs on mozzarella cheese, which is part of that food product. The tariff is 245.5%.

So clauses 91 and 92 clarify how these products, or how the components of these products, should be classified—i.e., the cheese should be classified as cheese—under the appropriate tariff item.

**Hon. Scott Brison:** Were the measures related to any court disputes?

**Mr. Patrick Halley:** Well, it's an issue that was brought to our attention. This was circumventing the import controls pillar, and the clarification addresses that gap with respect to ensuring the integrity of the import controls pillar of the supply management system.

**Hon. Scott Brison:** What's the expected fiscal impact of clauses 91 and 92?

**Mr. Patrick Halley:** There's no impact. This is solely a clarification to essentially clarify how these products should be classified. Essentially a loophole was found in the way the tariff structure was originally drafted. This only clarifies how these products should be classified.

**Hon. Scott Brison:** Thank you.

**The Chair:** Thank you.

[*Translation*]

That's all.

[*English*]

Okay. I want to thank our officials for being with us on part 4.

We have part 5 next. I know that there are a number of questions on it from a number of members, so I'll ask those three officials to come forward.

Colleagues, we have less than an hour left. I'm presuming this might take up the rest of the time today. Am I safe in presuming that?

**Some hon. members:** Yes.

**The Chair:** On your behalf, then, can I release from the committee today the officials for part 6 and ask them to come back on Tuesday? Is that a fair thing?

Mr. Rankin.

**Mr. Murray Rankin (Victoria, NDP):** Would it make sense, Mr. Chair, to have the officials for the first part of part 6 available, and nothing else, in the event that we don't use all the time on FATCA?

**The Chair:** So we'll keep the first four divisions for now and see how the time goes?

**Mr. Murray Rankin:** That would be good.

**The Chair:** All right.

Is that fair? Is that good? Okay.

I just want to be as fair as possible to the officials in the room.

**Mr. Dean Allison:** You're a fair chair.

**Voices:** Oh, oh!

**The Chair:** I have the best chair in Parliament here, so I'm under his mindful watch.

Of course, all of the officials are free to stay and watch the committee as well.

I want to welcome Mr. Cook back to the table. We also have Mr. Brian Ernewein, who's often before our committee—welcome back—and Mr. Kevin Shoom, who's been before us as well.

Mr. Rankin, I'd ask you to please start the seven-minute round.

● (1635)

**Mr. Murray Rankin:** Thank you.

Thank you very much to the witnesses for being here.

The intergovernmental agreement related to FATCA without doubt is one of the most complicated provisions of Bill C-31, and we, as the official opposition, have taken the position that it deserves a great deal more study than it is going to get through this process. Thus we have suggested it be taken out and given the study that's required.

In terms of timelines—I'm coming to a question—the context is this. It's been less than three months since February 5 and the agreement being signed, and here we are today. I'd ask you to correct me. The public was given 30 days to comment, and now this is part of this omnibus budget. It seems to me there has been undue haste given the enormous consequences of it.

My question to the officials is this. In your judgment, have you had adequate time to understand the intended and unintended consequences of such a dramatic piece of legislation?

**Mr. Brian Ernewein (General Director, Tax Policy Branch, Department of Finance):** Thank you for the question.

The answer is yes. I think the question you're asking, though, is whether others have had sufficient opportunity to consider its implications, and we believe the answer to that is yes as well.

I would make the point that, yes, the agreement was signed on February 5 of this year, so a couple of months ago, but our intention to negotiate such an agreement was announced in November of 2012. In this case, it's a negotiation based on a model agreement, which the U.S. had in the public domain. That, together with the release of draft legislation, the implementing legislation that's before you today in draft form with some revisions as a result of consultations, was also released later on the same day we signed the agreement, so that also enables opportunity for discussion and comment.

**Mr. Murray Rankin:** I've spoken to a number of tax lawyers. I'm going to Toronto tonight to talk to some more. The ones I've talked to certainly feel that the consequences are enormous, and they don't feel they have had enough time. But your judgment is that there has been enough time.

Have you done an estimate as to how many dual citizens or so-called accidental Americans are covered by this law?

**Mr. Brian Ernewein:** Well, I very much take that as two separate questions.

In terms of how many.... It's not limited to dual citizens to start.

**Mr. Murray Rankin:** Really?

**Mr. Brian Ernewein:** U.S. citizens who are living here, even if they are not Canadian citizens, can be affected by the obligation to identify themselves and to be reported on, because the U.S. tax base includes taxation on the basis of citizenship.

In terms of how many U.S. citizens are living in Canada with dual citizenship—that is, Canada-U.S. citizens or otherwise—we don't know the number. It's commonly suggested there are a million, plus or minus.

**Mr. Murray Rankin:** That is the number I've heard bandied about as well. That's your working assumption.

**Mr. Brian Ernewein:** That's what we were told or that's what we were given to understand.

You referred also to “accidental Americans”.

**Mr. Murray Rankin:** Yes.

**Mr. Brian Ernewein:** That's a function of whether people came to understand they were American citizens or thought they had given it up over time or the like. I'm not aware of any statistics being compiled on that.

**Mr. Murray Rankin:** There are Canadians married to U.S. persons, as that term is defined in FATCA, or children who were born in the United States but had no relationship to that country their entire lives. Those people living in Canada are also subject to it.

Is that part of the one million you estimate?

**Mr. Brian Ernewein:** My understanding is that the estimate that's been used includes all persons who are actually American citizens living in Canada. I take it that, whether they are citizens or aware of being citizens or not, they are counted.

**Mr. Murray Rankin:** We had a briefing with officials, as you know, and I'd like to follow up on that briefing, because there was a lot of information we weren't able to get then.

First of all there are, as you well know, very serious concerns that the intergovernmental agreement would violate the privacy rights of Canada and Canadians. Members were told at that briefing that neither the Department of Finance nor CRA had received an opinion from the Office of the Privacy Commissioner of Canada.

Do you now know where the Privacy Commissioner stands?

● (1640)

**Mr. Brian Ernewein:** It wasn't clear. You said we had not received an opinion.

**Mr. Murray Rankin:** That's what we were told when we had the briefing.

**Mr. Brian Ernewein:** Yes. I'm sorry. It was probably I who said that, and that was true then, and it is true now. It's not our understanding that the Privacy Commissioner offers opinions on proposed legislation.

**Mr. Murray Rankin:** You've had consultations with her office.

**Mr. Brian Ernewein:** We've kept the Office of the Privacy Commissioner informed and involved in discussions throughout this, including sharing the draft legislation with them.

**Mr. Murray Rankin:** Have you commissioned independent legal opinions on the implications of this law for either the Privacy Act or the Personal Information Protection and Electronic Documents Act?

**Mr. Brian Ernewein:** It is our understanding that the FATCA would have raised potential privacy issues because that involved a foreign law ostensibly requiring the provision of information from Canadian financial institutions in relation to Canadians.

There certainly seemed to be a privacy issue there and a potential conflict with our privacy law. Our understanding is that in relation to Canadian law, the Privacy Act and its various provisions are subject to other laws of Parliament. So the proposal before you is to change Canada's laws to require financial institutions to collect certain information in respect of their customers or clientele. We believe if that law is in place, that would be read in concert with the Privacy Act. That is to say the Privacy Act would be subject to that other law.

The other aspect of that, to give you a complete answer, is that on the provision of that information, when it goes to the Canada Revenue Agency and on to the United States—our treaty partner—to that we think there's an exemption. Also for laws of Parliament there already is in the statutes of Canada, the Income Tax Act provision to exchange information pursuant to our bilateral tax treaties.

**Mr. Murray Rankin:** Did I understand you to say just now that you think that this law, this part of Bill C-31, would not be subject to the Privacy Act, which is a quasi-constitutional law? Are you saying that?

**Mr. Brian Ernewein:** My understanding is that the Privacy Act allows for other laws of Canada, other acts of Parliament, to be read together.

**Mr. Murray Rankin:** To be read together, but in such a conflict it's the Privacy Act that prevails. You're not saying anything different, are you?

**The Chair:** Okay, only a brief response, this will be something I think we'll have to come back to.

A brief response, Mr. Ernewein....

**Mr. Brian Ernewein:** My understanding is that another law of Parliament can be read together with the Privacy Act so that the Privacy Act will not be in conflict with it.

**The Chair:** Thank you.

Mr. Saxton, please....

**Mr. Andrew Saxton:** Thank you, Chair.

I'd like to continue along the same questioning regarding the Foreign Account Tax Compliance Act, more commonly known as FATCA.

An absence of an intergovernmental agreement, an IGA, would have meant there still would have been an obligation on Canadian financial institutions to comply with FATCA. It would have been a unilateral and automatic obligation imposed by the United States that would have come into effect on July 1, 2014.

Can you please explain what the consequences would be for Canadians and financial institutions had the IGA not been arrived at?

**Mr. Brian Ernewein:** Thank you. I think it's a very important question.

To be clear to this committee, I don't think it is the case that it was a question of whether to do this intergovernmental agreement or nothing. It was a question of how this intergovernmental agreement would compare relative to the U.S. congressional act, or the HIRE act, and the provisions of FATCA within it.

FATCA itself would have required non-U.S. financial institutions, including Canadian financial institutions, to sign agreements with the Internal Revenue Service, under which they'd have to undertake due diligence on their own accounts—that is, to identify their U.S. account holders—and report on those directly to the Internal Revenue Service.

In some circumstances financial institutions would be required to withhold 30% of payments that were made to their account holders, or alternatively, potentially to close those accounts. Again, in possible conflict with Canadian law.

A financial institution that decided not to enter into such an agreement with the Internal Revenue Service would itself be subject to 30% withholding on payments going to it and to its clients from U.S. sources.

That raises, as we've already had a discussion about, concerns about privacy laws, the potential application of the 30% withholding tax, the impact on financial institutions and indeed the financial system, the possible requirement to close accounts, and really a grave compliance burden for everybody, affecting both financial institutions and of course their clients.

We think the intergovernmental agreement addresses a lot of that by eliminating the withholding tax issue, eliminating the risk of potential account closure, addressing the issue with the Privacy Act, and by virtue of some of the exemptions we've obtained for financial institutions not having to report on a large number of registered accounts not having to be reported on, the compliance burden is not eliminated but is much moderated.

● (1645)

**Mr. Andrew Saxton:** So as a direct result of the IGA, Canadian financial institutions will be saving a tremendous amount of resources—financial, administrative, time—as a result of the benefits of the IGA. Would you agree with that?

**Mr. Brian Ernewein:** I would agree with that. I think for them and their clients it's certainly not, in their view, something perfect from the financial institutions' perspective, but I think it's much better.

**Mr. Andrew Saxton:** It also helps to protect Canadian laws.

**Mr. Brian Ernewein:** Well, it doesn't raise the conflict of laws issue that we talked about earlier. I believe that's true.

**Mr. Andrew Saxton:** Due to the fact that we now have an IGA, which was negotiated by our late finance minister, Jim Flaherty, we were able to get concessions from the U.S., concessions that other countries probably didn't get. Can you just elaborate on some of the exemptions and the concessions that we were able to achieve through the negotiations of the IGA?

**Mr. Brian Ernewein:** First of all, the U.S. sought as much as possible to have identity in the agreements they negotiated with every country. Understandably, if they're trying to negotiate with the world, and I think they've signed as of today 30 of these agreements, they weren't much minded to be very novel. That made it very difficult, a tougher discussion, but we did push to achieve as much as we could in relation to Canada.

The two types of exemptions—the key ones I would identify so I don't take up the whole hour with this answer—are for small financial institutions, those having less than $175 million in assets. Also, another definition was those that had 98% or more of their client base as Canadian, and weren't part of a multinational group. Those institutions would be exempt from reporting. I rush to add, that's common to other agreements as well.

Something that's specific to Canada is the exclusion of a wide range of accounts, specifically registered accounts. It's not a complete list but it's nearly so: registered retirement savings plans, registered retirement income funds, pooled registered pension plans, registered pension plans generally, tax-free savings accounts, registered disability savings plans, registered education savings plans, and deferred profit-sharing plans. These are all exempt from reporting under the IGA in support of FATCA.

**Mr. Andrew Saxton:** Just to summarize, then, are Canadian financial institutions and Canadians much better off as a result of this negotiated intergovernmental agreement than they would have been in the absence of an agreement?

**Mr. Brian Ernewein:** As opposed to FATCA itself applying, there would have been many more issues and a much higher compliance burden in that circumstance. So on that measure, yes, they were much better off. We are much better off as a result of this agreement.

**Mr. Andrew Saxton:** Thank you, Chair.

**The Chair:** Mr. Brison.

**Hon. Scott Brison:** I'd like to actually follow up with the discussion of the RESPs and RDSPs. These both include matching grants provided by the federal government. Of course, these grants are intended to help families save for post-secondary education or help disabled Canadians avoid poverty. They weren't intended to somehow make their way into the U.S. treasury.

How does the U.S. view these Canadian registered accounts? If a Canadian were to volunteer the information to the Americans or someone who is considered a U.S. person, a Canadian who's considered a U.S. person under FATCA, are they subject to federal U.S. taxes?

**Mr. Brian Ernewein:** Actually, this question only came up quite recently, and we hadn't considered it before. As a result of subsequent discussions, we've learned that the U.S. hadn't considered it before either. But having received the question, it was good to try to sort through the answer.

The second thing I will say is that, yes, U.S. citizens are subject to U.S. tax, which means that if you are a U.S. citizen resident in Canada, you're essentially exposed to both the Canadian and U.S. tax systems.

To get to your point about RESPs and RDSPs, we do not tax the government grants when they go into the plan. That's kind of antithetical to the point. But when those grants or other income generated by the plan do come out of the plan in the beneficiary's hands, they are subject to Canadian tax.

Ideally, the U.S., if they chose to tax it at all, would try to match that taxation to tax it at that time. So we would tax. If there is citizenship tax on top of that, there rarely would be, but if there were, then the timing would be right.

We had the opportunity to discuss this with the U.S. since the question has been asked of us. As I said, they hadn't considered the question before, but based on the description of the plans we provided them, they told us that indeed they consider there to be no taxation at the time of the grant or other contribution to either of these types of plans, but when the amount comes out and represents income to us, they would consider that it would represent income for U.S. purposes, too. So there'd be taxation at the same time.

● (1650)

**Hon. Scott Brison:** Earnings on the grant, the contribution by the Canadian government to these accounts, would they be taxed upon withdrawal by the Americans?

**Mr. Brian Ernewein:** On the grants themselves, and the earnings thereon, my understanding of the answer we've received is that those are taxable on receipt by the beneficiary.

**Hon. Scott Brison:** Okay, I'm sorry, you said when the grants go into the accounts they're not considered taxable by the Americans.

**Mr. Brian Ernewein:** That's right. That's my understanding.

**Hon. Scott Brison:** But in the future, when there's a withdrawal from the account for a Canadian with a disability, or a young Canadian who's cashing in part of their RESP for their education, at that point would it be considered taxable by the Americans, on the way out?

**Mr. Brian Ernewein:** Yes. The specific question we've had a discussion with the U.S. about was in relation to the grants themselves. On that, they've said that because of the conditionality of it, it's not clear that these will go out to the beneficiary. They would be included in income for U.S. tax purposes only at the same time and to the same extent as they would be for Canadian tax purposes, that is, on payout.

**Hon. Scott Brison:** Just to be clear, when there's a withdrawal from these accounts, the earnings on, and in fact, the capital from the contribution by the Canadian taxpayer will be taxed by the Americans. This is what I think a lot of Canadian taxpayers and citizens would view as perverse, that the Canadian taxpayer is funding grants into these accounts, RESPs and RDSPs, to help people with disabilities or to help their children get a good education, and ultimately, the American treasury is benefiting from that. That would not make a lot of sense to Canadians making these contributions.

**Mr. Brian Ernewein:** You made reference to contributions. If you're talking about capital contributions by the parent or other subscriber—

**Hon. Scott Brison:** But on their way out....

**Mr. Brian Ernewein:** Right.

The question wasn't discussed with the U.S., by my recollection, but I don't believe there's a question that they're taxing it, because that's not income by any measure.

The question we had before, and that we asked, was about the grants themselves, the government grants that go into these. These are taxable by us. The U.S. view was that it appeared to be income to the beneficiary if, and only if, it actually went to the beneficiary, if all the conditions were satisfied. But that would also be the point at which we're taxing, so it would be matching up, and quite conceivably, there would be no additional U.S. tax as a result.

**Hon. Scott Brison:** Yes. On the way out, when people are withdrawing from them, that will be considered taxable in these accounts?

**Mr. Brian Ernewein:** As we do in the grants themselves is what we understand.

**Hon. Scott Brison:** If a Canadian disagrees with the finding that they are a U.S. person, is there an appeals process? How does that work?

**Mr. Brian Ernewein:** Is this question in relation to the intergovernmental agreement, or more generally in terms of U.S. taxability?

**Hon. Scott Brison:** If they are considered a U.S. person under FATCA, and they don't want to be, what is the appeal process?

**Mr. Brian Ernewein:** Let's take the position—

**Hon. Scott Brison:** It's a pretty significant incentive not to.

● (1655)

**Mr. Brian Ernewein:** Right.

First of all, whether or not somebody is subject to U.S. tax, as a U.S. taxpayer, as a U.S. resident, or as a U.S. citizen, is a question of fact or law, or mixed fact and law. That stands separate from the intergovernmental agreement itself. The intergovernmental agreement is strictly about information reporting.

If the question is about how one sorts out an assertion by the U.S. that they're American residents for tax purposes, and they disagree with that, the tax treaty can have relevance to that in terms of determining the breaking of the tie between our two countries' laws. It was fine to be resident under both. Our tax treaty also sorts out for Canadian residents, and I mean real residents, who are U.S. citizens, and I mean real citizens, in terms of the pecking order of taxation.

But if you're speaking about the intergovernmental agreement itself, that's really a question between the taxpayer and the financial institution they're dealing with. Perhaps your question relates to what the financial institution does when the person says, “I am not a U.S. citizen.” In that circumstance, it's generally the case that the financial institution relies on what they're told by the person, in the absence of clear, contradictory evidence.

I'm sorry, I've tried to cover everything there.

**The Chair:** Thank you, Mr. Brison.

We'll go to Mr. Keddy, please.

**Mr. Gerald Keddy:** Thank you, Mr. Chairman.

Just a couple of points of clarification.... Mr. Brison in his question stated “Canadian citizens”, and I think what he meant was American citizens living in Canada. If they're American citizens by default because they happen to be born in the United States but had never officially taken out citizenship and moved to Canada at a very young age, that's immaterial really to this discussion.

The difficulty here is that the Americans have engaged in a far-reaching tax policy that taxes American citizens who live outside of the geographical boundaries of the United States. However, there are a number of things that this person can do. They can renounce their American citizenship if they don't want to pay American taxes. That's not been suggested here, but that's the reality of this situation. There are many American citizens living in Canada and many that I know who have been paying taxes for years in the States on U.S. investments and on any investments they have that pertain to America.

A lot of people have been following the rules. We have an intergovernmental agreement. We have a situation where because of this, Canadian financial institutions will not have to report directly to the IRS. This protects Canadian privacy, and I think that's what most of us here are really worried about, protecting that financial privacy of Canadian citizens. As for American citizens living in Canada, they have some tough decisions to make on whether or not they want to continue to be American citizens and pay American taxes when they're living offshore.

How far does this go to protect the financial information of American citizens living in Canada and dual citizens?

**Mr. Brian Ernewein:** First of all with the earlier question, I had made reference to Canadian citizens, yes. I thought we were talking about U.S. citizens living here or American residents, so thank you for pointing that out.

**Mr. Gerald Keddy:** Yes.

**Mr. Brian Ernewein:** The second point, although it wasn't your question, I will say that I think it should be emphasized that there's a difference here between what the U.S. does in terms of its tax base, including taxation of citizens, and what the intergovernmental agreement does. We don't tax citizens. Perhaps no other country apart from the U.S. does tax on a citizenship basis. In our view at least to a lot of issues, that's clear, but as to whether or not they're entitled to enforce their laws, we've kind of accepted since probably our first tax treaty with them in the 1940s that they can, and this is part of that.

By virtue of my preamble, I've lost your question, sir. I'm sorry.

**Mr. Gerald Keddy:** The protection of the material...but not reporting directly to the IRS.

**Mr. Brian Ernewein:** Yes, thank you.

By virtue of the model or the intergovernmental agreement, and this was a very important point to Minister Flaherty, we would use the protections of the existing Canada-U.S. treaty on our own and our own protections. Under the Canada-U.S. treaty and indeed our other treaties, this information can only go to the revenue authorities, the IRS. It can only be used for the purpose of taxation and not for other purposes, subject to strict safeguards. It's also collected by our own revenue agency for transmission as opposed to having information being provided directly by Canadian taxpayers, financial institutions, to foreign authorities.

There's this whole architecture around the collection and sharing internationally or bilaterally of tax information that comes into play when you use the procedure that this agreement does. In addition to the other advantages that, Mr. Saxton, we talked about, I think this is a very important one and should not be lost sight of.

● (1700)

**Mr. Gerald Keddy:** That's good. Thank you.

**The Chair:** Thank you, Mr. Keddy.

We'll go back to Mr. Rankin then, please.

**Mr. Murray Rankin:** Thank you, Chair.

We talked about privacy constitutionality of this intergovernmental agreement. As you may know the leading constitutional lawyer of Canada, Mr. Peter Hogg, has said it's unconstitutional. One of our leading constitutional lawyers, Joseph Arvay, has now embarked in a constitutional challenge to this law.

At the briefing, your officials told us that the minister and Department of Justice are responsible for making sure that our laws are consistent with our constitution. However, legal experts have said that the intergovernmental agreement implicitly repeals a number of laws. Since our meeting, have you obtained an opinion from the Department of Justice on the constitutionality or from outside counsel?

**Mr. Brian Ernewein:** Well, may I be clear, first of all, that I think there are two separate legal questions that may have been bundled up in yours. One is whether or not it's possible for Parliament to enact a law requiring a collection of information, and whether or not by virtue of that law the Privacy Act makes space for it to apply. That was my point before. I think that's the way the laws work. The Privacy Act says that it's subject to other acts of Parliament, so if Parliament enacts a law for the collection of information, as is proposed, or if Parliament enacts a law, as it has already done, for the sharing of information, then I think the Privacy Act makes space for that.

I think a separate point you're making is whether or not there's a constitutional issue with this legislation. My understanding of Mr. Hogg's view is that he thought there might be some claim that because there's at least part of this that's based on a collection of information determined by reference to citizenship, this could be an issue.

I'm afraid I don't know, Mr. Arvay's views on that.

The direct answer to your question on the constitutional point is that the Minister of Justice is charged with conveying to Parliament a view, if it ever arises, that there's a constitutional or charter issue with the legislation. It has been examined, and no such view has been conveyed.

**Mr. Murray Rankin:** You therefore have a legal opinion from Justice and/or outside counsel to that effect.

**Mr. Brian Ernewein:** The Minister of Justice, as I understand it, has discharged his responsibility to review the legislation and assess it on constitutional grounds, on charter grounds.

**Mr. Murray Rankin:** You spoke about privacy a moment ago, but we're talking about the inequality of our dual citizens and their rights being different from others'. Has that aspect been examined as well?

**Mr. Brian Ernewein:** It was the second or latter aspect that I was speaking about in terms of what I understand to be the constitutional question that some have raised. It's suggested that there has been a charter issue. That's been examined by our Minister of Justice or the Department of Justice.

But I'm not at liberty, and I'm certainly not qualified, to speak to the opinion.

**Mr. Murray Rankin:** I want to talk now about the cost of this. At our briefing we asked you how much it would cost for the CRA to implement this agreement, and we were told then that the department had not produced cost estimates, which we found quite shocking. Here we are with this bill at committee stage.

Today, do you know what the cost...? I'm going to break down the cost. The cost for the CRA to implement the agreement is one category, the direct cost to the Government of Canada. Then do you have any estimates of the costs to the banks and other financial institutions to deal with this law? Let me stop it at that, those two levels of costs.

Do you have those now?

**Mr. Brian Ernewein:** Yes, thank you. I was participating in that parliamentary briefing and made the point that we didn't have it then, but we'd use it as notice to ask our CRA colleagues. I'm sorry, we have the number. I'm just having trouble locating it.

I'll run from memory. I think I have it right.

The CRA has sought to put together an estimate. I think it is still subject to approval by the parliamentary committee, but it's an estimate of $5.7 million to the CRA, to be precise about your question, over the next five years to implement this regime. There are some additional costs because of the information technology requirements that are associated, and CRA's estimate at this point is that on an ongoing basis that cost would be in the order of $715,000 annually.

● (1705)

**Mr. Murray Rankin:** The other part of my question related to the banks. I have it here that Scotiabank, one of Canada's large banks, has spent almost $100 million implementing a system to report to the United States the account holdings of Canadians of American origin and their Canadian-born spouses in order to comply. That's one bank, not credit unions and not the other banks. Have you had in your discussions or consultations a global figure as to the cost to our financial institutions to comply with this law?

**Mr. Brian Ernewein:** No, that I can't speak to.

We have heard that $100 million figure. It was used actually very early on by one or more of the banks as a very rough estimate, but I frankly don't recall any longer whether it was in relation to FATCA, or.... I think it was in relation to FATCA rather than this new model. My suggestion would be, if I could be permitted to make it, to ask the banks.

**Mr. Murray Rankin:** Yes, well, I wanted to ask you, because you presumably had some consultations with financial institutions. It would seem to be a question that might have come up.

So it was $100 million for one bank. That's presumably going to be passed on to all.... It's not just U.S. persons, in other words, who will pay that. It will be all of us—Scotiabank customers, for example, or shareholders who will get less return.

Isn't that logical?

**Mr. Brian Ernewein:** Well, I want to be clear, first of all, that I'm not subscribing to the number because I don't know if that is the right number.

I also want to make the point that apropos the point that Mr. Saxton made, the scope of the obligations on financial institutions and on their clients is much reduced by virtue of this agreement as compared to what FATCA itself would have required.

It's not a current statistic, but when the government announced the tax-free savings account a few years ago it made the point that over the course of time 90% of taxpayers will be in a position to have all of their savings in registered accounts. On that basis, it gives you an indication of the helpfulness of this agreement in relation to FATCA itself.

**The Chair:** You have 10 seconds. I can come back to you in another round.

**Mr. Murray Rankin:** Thank you, Chair.

**The Chair:** We'll go to Mr. Allen, please.

**Mr. Mike Allen:** Thank you very much, Mr. Chair.

Thank you to our witnesses.

I want to follow up on the last question from Mr. Rankin with respect to the cost to the banks. One way or another, this was going to happen to the banks—either way. To say that the banks would have been better off under this....

With regard to the costs that they were going to incur, they would have had to incur costs anyway to meet the requirement of directly reporting to the U.S., which might have even been more.

Is that correct?

**Mr. Brian Ernewein:** I think I can say without any hesitation that it certainly would have been more. This is an obligation on the banks. I've made the point more recently, in another discussion, that I'm sure the banks aren't tickled by this, even with what we have done. I do think they have taken the position and would continue to take the position that this is much less onerous on them than the alternative would have been.

That's not to say they like it, but I think they consider it superior to what otherwise would have been done for them and for their clients.

**Mr. Mike Allen:** Okay.

I want to ask you a few things. You look at the citizens who are in Canada and put them in a bunch of broad categories. You have the ones who have worked in the U.S. and are now living in Canada. There are the ones who are maybe U.S. citizens, to the extent that they are U.S. citizens by accident of birth because they happened to live in a border community and the U.S. hospital was the only one that happened to be open. “Sorry, but you were born in the U.S., so tickety-boo there you go”. Then you have your dual citizens of course, which some of those people would be.

What does FATCA do to ensure the protection of these citizens living in Canada against any possible penalties from the IRS? Where is the line as to where CRA will help or not help the IRS to act against someone living in Canada?

**Mr. Brian Ernewein:** Thank you.

This is purely an information agreement, so it's about collecting information from financial institutions and providing that information through the Canada Revenue Agency to the IRS.

As to what systems and collection provisions we have with the United States, there is such a provision. For the last 15 or 18 years, perhaps, in the Canada-U.S. treaty, there has been provision in that treaty for Canada and the U.S. revenue authorities to help each other in the assistance and collection of taxes.

However, that does not apply to penalties outside of the tax system, and it also does not apply to citizens. For any dual citizen who might be discovered and assessed U.S. tax liability, the treaty does not allow assistance and collection in relation to that person because they are a Canadian citizen. If they were only a U.S. citizen, then it's possible that the collection assistance provisions could apply. However, there are other considerations that have to be weighed before that rule kicks in. It has to be in relation to the basic tax, or tax related, and only after the final tax liability has been determined.

● (1710)

**Mr. Mike Allen:** So for a permanent resident it might well apply, as opposed to a dual citizen.

**Mr. Brian Ernewein:** If they are not a Canadian citizen.

**Mr. Mike Allen:** Right.

When you look at the exchange of information that's coming under FATCA, how does that compare to our existing tax exchange? I guess there would probably be a lot of detail within the existing tax exchange agreements. Is it comparable information? I can't imagine it would be the same as tax evasion, for example. How does this compare to existing provisions within our tax exchange agreement?

**Mr. Brian Ernewein:** It's a very good but very involved question. At a high level I will say this. We already require entities and other taxpayers who are making payments to non-residents to identify those payments and to provide that information to Revenue Canada.

When the payment is going to a resident of the U.S., there is already an exchange of information that happens. Indeed, when you or I invest in the US, and receive some income from the U.S., the U. S. will send us a form. They'll also send the IRS a form, and that information will be exchanged with Canada as well, on at least the basic sources of income.

So in that respect, what FATCA does is not different. However, FATCA does go further in relation to that example I've given in that it seeks a bit more information, not only the account holder and the financial institution, it requires that the taxpayer identification number—it's a U.S. tax identifier—be provided. It looks for the account balance to come, not just the amount of income that went but the account balance also to be provided.

The other aspect of it at a very high level that I think is different is the so-called due diligence procedure. Under—I call it FATCA—the intergovernmental agreement, there's a bit more digging required by the financial institutions to follow up on markers or indicators of a U. S. connection, whether it's a U.S. address or the like, to find out whether there's a real U.S. connection there. If it proves that the person is actually a U.S. person, then the information is to be provided.

But it's not novel in the sense that we already collect information on payments going to non-residents, not based on citizenship but on residence, and that information is reported to the Canada Revenue Agency and shared with our treaty partners.

**Mr. Mike Allen:** Does this agreement have a reciprocity provision in it?

**Mr. Brian Ernewein:** It does, so we'll be collecting some additional information from the U.S., particularly in relation to what I've talked about as taxpayer identification numbers.

I do want to say though, for completeness, that it's not at the same level at the outset. The U.S. has asked the countries that enter into these IGAs to provide the information that I've talked about, to do the due diligence procedures that I've talked about as well. They aren't actually undertaking to do all of that immediately themselves. They're doing some of what I've referred to. There's a commitment in the agreement that they will work towards that equivalent treatment.

**Mr. Mike Allen:** Thank you.

**The Chair:** Okay, thank you, Mr. Allen.

Mr. Rankin, please.

**Mr. Murray Rankin:** Thank you, Mr. Chair.

When we talk about U.S. persons, are we talking about individuals alone, or are we talking about corporations and other entities?

**Mr. Brian Ernewein:** We are not talking about individuals alone. We've often, because that's where the conversation has led, talked about U.S. residents and citizens, but there's some relevance to entities as well.

If you'd like, we could give you some more information on the entities.

**Mr. Murray Rankin:** Yes.

Here's where I'm going with the question. If it does cover corporate persons, or other trusts of the like that are subject to this as U.S. persons, has there been any study done on the implications, for example, of improperly revealed information that might harm the competitiveness of industries in Canada, or entities—as you put it—in Canada?

**Mr. Brian Ernewein:** Well, I'll answer that question first, and then if you're still interested we can talk about how the rules work in relation to entities. It's the same restrictions on the use of taxpayer information that I talked about earlier that would apply there. There is a question of reliance and reliability of the foreign country with which we are exchanging information that comes into play on this.

The conditions for provision of information—whether it relates to individuals or to entities—is that the information can only be used for tax purposes, and not otherwise.

● (1715)

**Mr. Murray Rankin:** That's what the document says, but once it's in U.S. hands, Canada has no control over how it may be used in the United States.

**Mr. Brian Ernewein:** That's right. There's a question of—as I say —the reliability of our treaty partner. We do take the view that we can rely on the U.S. to limit it's use of the tax information as, indeed, they rely on us.

**Mr. Murray Rankin:** Indeed, so it might be that information could well find itself...as we've seen in other contexts with the United States taking our information. There's the USA PATRIOT Act, there are a number of other statutes where the information on Canadian/U.S. persons could well find its way into other entities. We're just relying on their statement that they're not going to do that.

**Mr. Brian Ernewein:** Yes. That would be inconsistent with their commitments to us and their legislation, so it would only be on the basis that they were violating the agreement that it could happen.

**Mr. Murray Rankin:** I'm sorry, regarding the question earlier about whether or not you did a study on the implications for the competitiveness of Canadian entities, if their information was found in the United States, has there been any analysis undertaken?

**Mr. Brian Ernewein:** Well, the answer is no, because we challenge the premise of the question—

**Mr. Murray Rankin:** The promise to not do so....

**Mr. Brian Ernewein:** We exchange information already with the U.S. and with other treaty partners, on which we rely on the terms of the agreement we have with them.

**Mr. Murray Rankin:** What about the interference with cross-border mobility of Canadian workers going to the United States, those with green cards, for example? They're going to be subject to costly tax compliance measures after they return to Canada. Has there been any analysis done of the implications for that sort of cadre of Canadian worker?

**Mr. Brian Ernewein:** Forgive me, I'm not sure if I understand how they're affected in the way you suggest.

**Mr. Murray Rankin:** Green card holders in Windsor, for example, people going across to the United States who actually work there, there may be enhanced scrutiny of their tax situation as a consequence of this FATCA. Are there any issues we need to be worried about with cross-border mobility? Maybe not.

**Mr. Brian Ernewein:** I don't know of any. To take the specific example you raise, if there's a person who's living in Canada while a green card holder...so they're actually living in the U.S.?

**Mr. Murray Rankin:** Someone living in Canada and working in the United States under a green card, who goes back and forth regularly....

**Mr. Brian Ernewein:** All right. Well, in those circumstances they'd be exposed, if you want to call it that, to the U.S. tax system already. Their income would be subject to U.S. tax by virtue of the U.S. employment.

**Mr. Murray Rankin:** There would be no enhanced concern as a consequence?

**Mr. Brian Ernewein:** Not that it occurs to me.

**Mr. Murray Rankin:** All right.

We talked earlier about the reciprocity of this, and a lot of people have been challenging that notion that this was reciprocal. Under international law, as I understand it, there need to be gains to both countries as a consequence of an international agreement such as this. I'd like to know if any analysis has been done of the gains to Canada we achieve by entering into an agreement of this sort.

I understand the lack of economic sanctions is a gain, if you will, but what about other gains for us? Is there a reciprocal agreement that the United States has entered into? Talk about those things, the gains and the reciprocity.

**Mr. Brian Ernewein:** Thank you.

Thank you for acknowledging at least that there is this point about issues avoided. I think there also is the point that we do gain some additional information immediately from the U.S. in relation to the collection of taxpayer identification numbers, which will help in our own data matching. That's immediately.

It's not delivered immediately, but we also do have the commitment to full equivalence, if you will, over time.

There is one other thing I would add and you might consider this a soft point, but I think it's worthwhile. Even though FATCA itself started off kind of badly, in the sense that what it first proposed raised a lot of issues for a lot of us and a lot of taxpayers, the development of the intergovernmental agreement seems to us a good thing in terms of advancing exchange of information. It still has a lot of issues and in particular with the U.S. on citizenship, but as a matter of principle, it seems to us to be something that enhances taxpayer compliance.

The point I want to make is that I think as a result of the discussion around FATCA and the intergovernmental agreements, countries, particularly the G-20, have now moved forward in trying to adopt an automatic exchange of information procedure or standard. It's coming to be known as the common reporting standard. It's still under development, but G-20 finance ministers and G-20 leaders have committed to working to bring that to reality, and whether it's grudgingly or not, I think the FATCA discussion and debate has sort of led to some of that evolution.

● (1720)

**The Chair:** You have one minute.

**Mr. Murray Rankin:** There are scholars who are going to be testifying at this committee who indicate that FATCA is “inconsistent” with the terms of the existing tax treaty we have between Canada and the United States because it “provides for appropriate changes to the treaty”. They say the intergovernmental agreement explicitly implements the FATCA agreement, but “superficially”. It only appears to meet the standard, and that the IGA introduces “an unprecedented asymmetry in the treaty”. They recommend that the government explain why normal treaty amendment processes haven't been followed and we have this asymmetry introduced into Canada.

Would you have any comments on that analysis, that lack of symmetry?

**Mr. Brian Ernewein:** Just to help situate myself, these are comments by Arthur Cockfield or...?

**Mr. Murray Rankin:** Yes, that's correct, exactly.

**Mr. Brian Ernewein:** Well, the immediate asymmetry and ongoing sort of quest for symmetry is something that can be the subject of comment, and people could think or suggest that Canada ought to have sought immediate symmetry or reciprocity or equivalence and not agreed to it without having done so. I would say what we've done on that basis is the same platform as the other 29 countries or jurisdictions that have agreed to it.

To respond more directly to the question, I don't understand it as a legal question. I think we can provide benefits to another country and they could provide different benefits to us. I don't think the fact that the suite, if you will, is different makes it an illegal agreement. That, I just don't understand.

**Mr. Murray Rankin:** Okay. I think I'm out of time.

**The Chair:** Thank you, Mr. Rankin.

We'll go to Mr. Saxton please.

**Mr. Andrew Saxton:** Thank you, Chair.

I'll share my time with the chair.

I just wanted to mention, Mr. Ernewein, you were responsible for negotiating a big part of this IGA, were you not?

**Mr. Brian Ernewein:** I had a role in it, yes, sir.

**Mr. Andrew Saxton:** As well as Mr. Shoom...?

**Mr. Brian Ernewein:** He did the heavy lifting.

**Mr. Andrew Saxton:** On behalf of Canadians and our government I want to thank you both for negotiating this IGA, which is a significant improvement over the FATCA. It's leaving us in a much better position as a result of your efforts, so I'd like to thank you both for those efforts.

Mr. Chair.

**Mr. Brian Ernewein:** Thank you.

**Mr. Kevin Shoom (Senior Chief, International Taxation and Special Projects, Department of Finance):** Thank you.

**The Chair:** Thank you, Mr. Saxton.

I just wanted to pose some very basic questions here. I'm getting a fair amount of correspondence on this, as you can imagine. When I'm phoning people back I'm asking if they are talking about FATCA or the IGA. Many people actually believe FATCA is Canadian legislation that is somehow included in Bill C-31. So when I explain the difference in that FATCA is U.S. legislation that takes effect whether the Canadian government acts or not and the IGA is in fact a response to that....

You stated very clearly before this committee that we didn't have the choice of doing nothing. But just for argument's sake suppose the Canadian government did not negotiate the IGA and suppose for argument's sake the Canadian financial institutions chose not to comply with FATCA. If they just said they were not going to comply with this U.S. legislation what would be the repercussions to those institutions and thus to Canadians?

**Mr. Brian Ernewein:** Thank you.

First of all can I just make a comment?

**The Chair:** Yes.

**Mr. Brian Ernewein:** I think people do confuse FATCA with IGA, where in fact the IGA displaces FATCA. It says instead of FATCA we'll do this, so that is an important point.

I would also say that as a result of FATCA and the discussion around it and FBAR a couple of years ago I think there are a number of Canadians, accidental Americans, or otherwise, who are kind of becoming aware of the issues of U.S. citizenship taxation. So that's an issue more generally. It doesn't relate to this but it's spurred on by this.

I just wanted to say that quickly.

Now I'll answer your question.

**The Chair:** You are correct because many people actually link all of those issues together.

**Mr. Brian Ernewein:** I think that's right.

So in the absence of an IGA—and I don't want to sound apocalyptic but there were very serious issues. The U.S. said it was about exchange of information and it's always been about the exchange of information but their penalty, their lever, under FATCA to get information was to impose a 30% withholding tax on payments made from the U.S. to foreign financial institutions. It was a wide range of payments, not just interest and dividends but possible derivative transactions and other things. To be apocalyptic for a moment, it appeared to us and to people and our colleagues in the financial sector area that it essentially would shut out a bank or other financial institution from any interaction with the U.S. markets. I don't think that was the U.S. goal but it could have been the effect.

Also, for those financial institutions that wanted to comply with FATCA and found some way to overcome the privacy conflicts that we think existed with doing it, their clientele would have been subject to not just the same requirements as this legislation but much more onerous requirements. All of their accounts, including registered accounts, would have been subject to examination and the account closure could have been a consequence of it and withholding tax could have been applied by them. Ostensibly there would have been a debate about this but in fact the Canadian financial institution would have been required to withhold payments made to its own Canadian customers on behalf of the United States.

I don't mean to go overboard but I think there would have been real serious consequences for the financial system generally and it would not be a better world for Canadian financial institutions or for Canadian customers.

● (1725)

**The Chair:** I appreciate that clarification.

So for a financial institution, say like TD Bank, which is headquartered here in Canada and has more branches in the United States than it has in Canada, something we should be proud of, let's say they as an institution said they were not going to comply with FATCA. It seems to me that's not even an option for them. What would be the repercussions for that institution if they chose not to comply with the U.S. legislation?

**Mr. Brian Ernewein:** I think that any of their U.S. presence would have been separate and apart from this but in relation to their Canadian operations and indeed their third country operations outside of the U.S., it would have been as I described. That is to say, they would have had these issues with either being in some sense shut out of the U.S. market or having to do the same thing as the intergovernmental agreement would require but on a much wider scope and on a much more onerous basis.

**Mr. Kevin Shoom:** I'll just add that part of the FATCA withholding that could have potentially applied to a Canadian financial institution, let's say with U.S. subsidiaries, is that any remittances from the U.S. to Canada associated with those subsidiaries could have been subject to the 30% withholding tax. If a Canadian financial institution were attempting to access liquidity through dividends from the foreign affiliate, from the U.S. affiliate, or through loans from that foreign affiliate, those could potentially have been subject to a withholding tax. Potentially also, if the financial institution attempted to divest itself of those U.S. assets, then the withholding tax could have applied to the gross proceeds associated with that divestment.

**The Chair:** I only have about a minute left, and the other topic I think is going to take a longer time, but the committee has received a brief from Moodys Gartner Tax Law.

Have you, as department officials, been aware of their concerns? I don't think you'll have time to address them here with respect to the definition of financial institutions, but do you want to provide a short comment now and then perhaps provide something in writing to the committee to address that?

**Mr. Brian Ernewein:** We are aware of the comment. I can give you a moment now, and then we can see where that takes us.

Yes, we are aware of their view. It's that we haven't fully complied with, effectively, our commitment and agreement with the United States and what we've done in our implementing legislation. We, in fact, think we have.

To give you a very quick overview of it, the intergovernmental agreement has a definition of financial institution with some subdefinitions. What we have done in our implementing legislation is to say that there's a specific list of regulated financial institutions that are required to report under the intergovernmental agreement, under our implementation of it. They're suggesting that we've left some stuff off the list, that there's something in the intergovernmental agreement in relation to the definition of a financial institution that is not captured in our list.

The difference seems to be based on the fact that the intergovernmental agreement has kind of a functional definition of what a financial institution does, that is, describing it by its operations, and then says it's to be informed by the Financial Action Task Force's definitions of financial institution. We've taken that Financial Action Task Force definition, which is found in our own anti-money laundering legislation—I'm getting to the end shortly—and we think that actually does conform with the agreement and delivers what was intended.

● (1730)

**The Chair:** Okay, I appreciate that very much.

I appreciate your appearance here today.

I suspect that there are some more questions on part 5. Yes, I'm correct on that.

Colleagues, on Tuesday we will start with the minister. I believe we have the minister for an hour. We'll start back with part 5, so we'll have our three officials back, and then we'll move to part 6.

Could I just have colleagues' attention for one minute, please?

I just want to indicate that on May 28, the estimates meeting.... Because the leader of the opposition, I believe, has designated Finance and Transport as the two departments for committee of the whole estimates, that in fact supercedes our committee meeting on May 28. So the meeting on May 28 will not happen. The calendar will be adjusted, but obviously, the members will want to be there in the House for the committee of the whole debate.

**Mr. Guy Caron:** What on May 28?

**The Chair:** That was the meeting on the estimates, so the estimates will be dealt with in the House.

I want to thank our officials for being here.

Thank you, colleagues.

I'll ask the members of the subcommittee to stay after just for a couple of minutes. I want to get their reaction to something very quickly.

Thank you.

The meeting is adjourned.