HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

THE CANADA REVENUE AGENCY, TAX AVOIDANCE AND TAX EVASION: RECOMMENDED ACTIONS

Report of the Standing Committee on Finance

Hon. Wayne Easter
Chair

OCTOBER 2016

42nd PARLIAMENT, 1st SESSION

THE CANADA REVENUE AGENCY, TAX AVOIDANCE AND TAX EVASION: RECOMMENDED ACTIONS

Report of the Standing Committee on Finance

Hon. Wayne Easter
Chair

OCTOBER 2016

42nd PARLIAMENT, 1st SESSION

STANDING COMMITTEE ON FINANCE

CHAIR

Hon. Wayne Easter

VICE-CHAIRS

Guy Caron
Ron Liepert

MEMBERS

Raj Grewal
Steven MacKinnon
Phil McColeman
Jennifer O'Connell
Robert-Falcon Ouellette
Hon. Lisa Raitt
Francesco Sorbara

OTHER MEMBERS OF PARLIAMENT WHO PARTICIPATED

Ziad Aboultaif
François-Philippe Champagne
Emmanuel Dubourg
Pierre-Luc Dusseault
Majid Jowhari
Robert J. Morrissey
John Nater
Gabriel Ste-Marie
Nick Whalen

CLERK OF THE COMMITTEE

Suzie Cadieux

LIBRARY OF PARLIAMENT

Parliamentary Information and Research Service

Brett Capstick, Analyst
Michaël Lambert-Racine, Analyst

THE STANDING COMMITTEE ON FINANCE

has the honour to present its

SIXTH REPORT

Pursuant to its mandate under Standing Order 108(2), the Committee has studied Canada Revenue Agency's efforts to combat tax avoidance and evasion and has agreed to report the following:

TABLE OF CONTENTS

THE CANADA REVENUE AGENCY, TAX AVOIDANCE AND TAX EVASION: RECOMMENDED ACTIONS

CHAPTER ONE: INTRODUCTION

On 14 April 2016, the House of Commons Standing Committee on Finance (the Committee) adopted the following motion:

> That the Standing Committee on Finance call for the Honourable Diane Lebouthillier, Minister of National Revenue, officials from the Canada Revenue Agency (CRA) including Ms. Stephanie Henderson, manager of offshore compliance, and officials from the Department of Justice to appear before the committee to provide the steps being taken by the Agency to combat tax evasion and tax avoidance and provide an explanation as to the current status of the KPMG/Isle of Man file; and
>
> That the committee also call for officials of KPMG to appear before the committee to explain their role in this file.

From 3–19 May 2016, the Committee held three hearings in relation to this motion. On 31 May 2016, the Committee adopted a related motion on this topic, and additional witnesses were heard on 7 and 14 June 2016. In total, nine groups or individuals made presentations to the Committee over the course of the study.

During the June 2016 hearings, witnesses were asked not to comment on an offshore corporate structure developed by KPMG and located on the Isle of Man; this structure is the subject of hearings by the Tax Court of Canada and the Federal Court. In asking the witnesses to limit their comments in this regard, the Committee was mindful of the *sub judice* convention and, solely in the context of the subject matter at hand, wished to avoid possible prejudice to the participants in these court cases.

The House of Commons holds the power of the "Grand Inquest of the Nation" (hereafter, the Power of Inquiry), which allows it to inquire into any matter that it considers necessary, with the possible exceptions of matters outside of its legislative competence or where it has expressly limited this power by statute.

The Power of Inquiry is delegated to House of Commons standing committees through the House of Commons' Standing Order 108(1), which provides that standing committees have the power to "send for persons, papers and records." According to the *Annotated Standing Orders of the House of Commons, 2005*, this power is qualified in the following way: the power of committees to send for persons "does not include Members of the House and Senators," and "the power of committees to send for papers and records is qualified in that the papers must be relevant to their order of reference and should only be requested if, according to the rules and practices, the House would itself order such papers."

The *sub judice* convention is a self-imposed restraint that the House of Commons and its committees may apply to their affairs, including their use of the Power of Inquiry or the delegated power to send for persons, papers and records; there is no legal requirement to adhere to, consider or debate adherence to the convention. Under this convention, members of the House of Commons avoid commenting on matters that are before the courts. The convention is based on the principle that Parliament and the courts should respect their respective functions and not interfere with – or be seen to be interfering with – each other's constitutional role.

In adhering to the *sub judice* convention, the House of Commons and its committees restrain themselves from drawing any legal conclusions. In part, the convention seeks to prevent the remarks of parliamentarians from prejudicing decisions before the courts. An example of such prejudice occurred in the 1988 case of *R. v. Vermette*, where the Supreme Court of Canada ordered a new trial for an accused person after Quebec's premier provided his opinions regarding the possible outcome of an ongoing matter before the Quebec Superior Court during the National Assembly's question period. The Supreme Court commented on this breach of the *sub judice* convention, stating that: "It is in the public interest that such accusations be scrutinized by the judiciary. [The Supreme Court] cannot accept that the reckless remarks of politicians can thus frustrate the whole judicial process." For these reasons, the *sub judice* convention encourages the House of Commons and its committees to be cautious in their proceedings so as not to interfere with – or be seen to be interfering with – judicial processes.

This report summarizes the testimony received by the Committee during these hearings, and presents the Committee's recommendations. Chapter Two focuses on the Canada Revenue Agency's (CRA's) efforts to enhance tax compliance by individuals and corporations, and to address situations of non-compliance. Chapter Three discusses the development and use of offshore corporate structures, including that developed by KPMG and located on the Isle of Man; it also identifies the CRA's actions in relation to that structure. The Committee's recommendations are contained in Chapter Four.

CHAPTER TWO: THE CANADA REVENUE AGENCY'S EFFORTS TO ENHANCE COMPLIANCE, AND TO ADDRESS AVOIDANCE AND EVASION

A. Background

During the Committee's study, witnesses discussed a variety of issues, including tax avoidance and evasion, selected Canada Revenue Agency (CRA) measures designed to enhance tax compliance and detect situations of non-compliance, the CRA's enforcement and prosecution processes, a number of international initiatives to address tax avoidance and evasion, and codes, directives and standards to which CRA employees and other tax professionals are subject. The background information below provides a context for the witnesses' comments.

1. Definitions

The CRA defines "tax avoidance" as any taxpayer activity that minimizes tax payable by contravening the object and spirit – but not the letter – of the law. It occurs when the taxpayer does not provide false information to the CRA, but the provisions of the tax legislation are used in a manner that was not intended by its drafters. The CRA's determination of whether tax avoidance has occurred is made on a balance of probabilities, and the taxpayer is deemed to be innocent if it is unclear whether abusive tax avoidance has occurred.

"Aggressive tax planning" is the term used by the CRA to refer to domestic and international strategies that "push the limits of acceptable tax planning." Part XVI of the *Income Tax Act* (ITA) and section 274 of the *Excise Tax Act* contain provisions that are designed to address aggressive tax planning. These provisions, which are known as the General Anti-Avoidance Rules (GAAR), are available to the CRA when specific anti-avoidance provisions do not address a transaction that would constitute aggressive tax planning. The GAAR provide the CRA with broad powers to challenge perceived tax avoidance activities. Essentially, where a transaction or a series of transactions is undertaken not primarily for a genuine business purpose but rather to obtain a tax benefit, the CRA may use these rules to invalidate the tax-free consequences of the transaction or series of transactions, and taxes may be owed.

According to the CRA, "tax evasion" involves the deliberate underreporting of tax payable by concealing income or assets, or by making false statements. Tax evasion violates the object, spirit and letter of the law. According to section 239 of the ITA, penalties for income tax evasion include fines of between 50% and 200% of the amount of tax evaded and/or imprisonment for up to five years. This section applies to tax advisors and to taxpayers, as section 239(1)(a) specifies that every person who has "made, or participated in, assented to or acquiesced in the making of, false or deceptive statements in a return, certificate, statement or answer filed or made as required by or under this Act or a regulation, … is guilty of an offence." However, advisors are rarely charged under

section 239; instead, they are more likely to face administrative penalties under section 163.2.

While the CRA does not define the term "negotiated settlement agreement" in the context of its pursuit of taxpayers for wrongdoing, the Organisation for Economic Co-operation and Development (OECD) defines "settlement" in this context to be the formal resolution of a tax and/or legal dispute – either before or during its litigation – where the taxpayer typically admits wrongdoing, agrees to co-operate with the tax authority, waives certain procedural rights and pays outstanding tax debts in exchange for a reduction in the sanctions that could be – or have been – imposed on him/her.

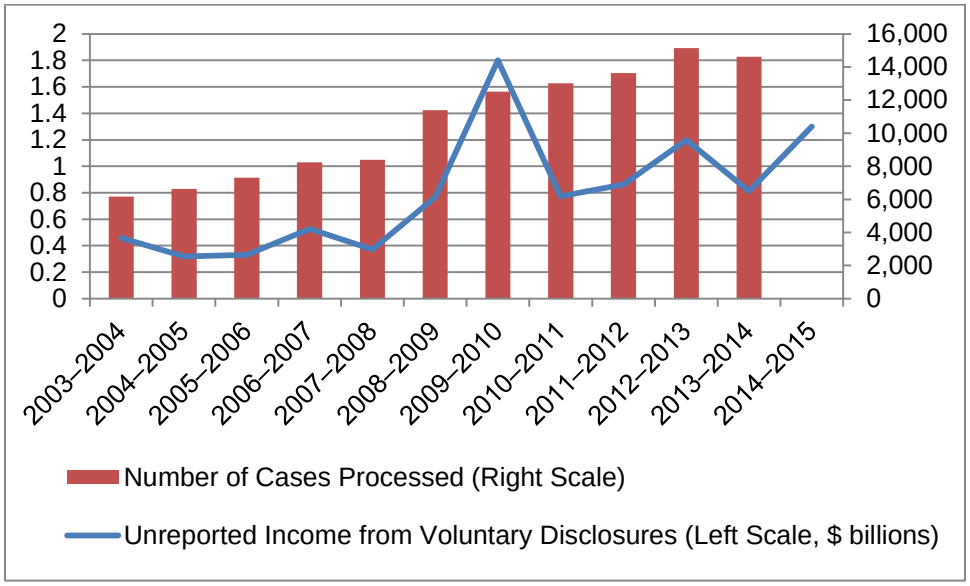
Similarly, the CRA does not define the term "amnesty" in the context of its pursuit of taxpayers for wrongdoing. However, various organizations have definitions for the term. For example, the OECD defines "tax amnesty" as a tax authority waiving the taxpayer's responsibility to pay outstanding tax debts. Certain U.S. states – such as Missouri – have offered "tax amnesty programs" that allow a taxpayer to avoid penalties, interest and criminal charges if he/she comes forward and remits outstanding tax debts prior to the tax authority's identification that a tax-related issue exists.

2. Selected Canada Revenue Agency Programs to Enhance Compliance and Detect Non-Compliance

Canada operates a self-assessment tax regime whereby taxpayers calculate their own taxable income. Canadian residents must report, and pay taxes owing on, both domestic and foreign income; this requirement applies to individuals, trusts and corporations. The CRA has a number of programs designed to enhance compliance with this regime, including the Voluntary Disclosures Program (VDP), advance income tax rulings, the Liaison Officer Initiative and a proposed registration system for certain tax advisors.

The CRA's VDP provides individual and corporate taxpayers with an opportunity to correct inaccurate or incomplete information in relation to their tax form, or to disclose information not previously reported on their tax form. Those who make a valid disclosure are required to pay the taxes or charges and any associated interest, but they are not subject to further penalties or prosecution.

Figure 1 – Number of Voluntary Disclosures Processed and Amount of Unreported Income in Relation to Voluntary Disclosures, 2003–2004 to 2014–2015

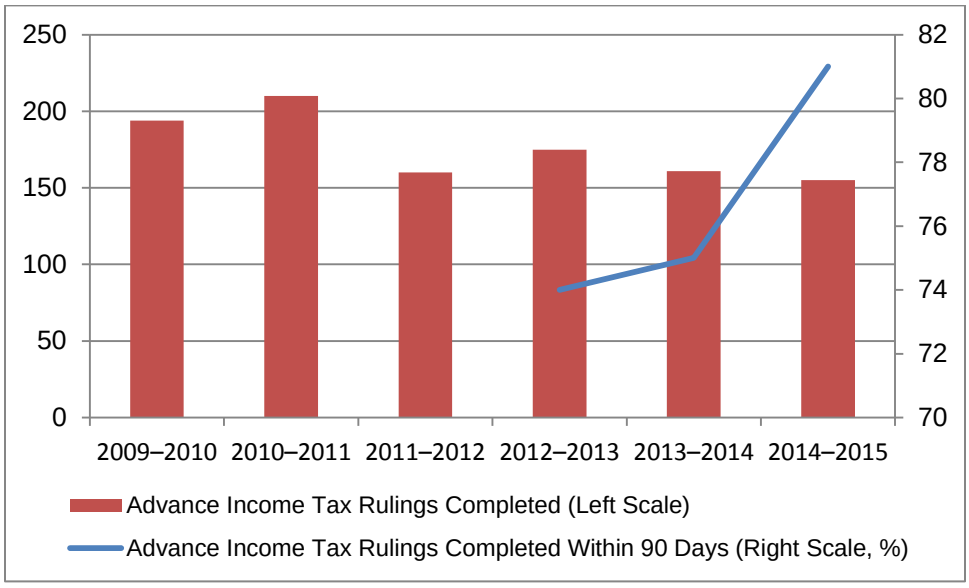


Note: The number of voluntary disclosures processed for 2014–2015 is not available.

Source: Figure prepared using data obtained from: Canada Revenue Agency, *Annual Reports to Parliament*, 2003–2004 to 2014–2015.

A taxpayer or a tax practitioner may also request guidance from the CRA regarding the treatment, under Canadian income tax law, of a proposed transaction or series of transactions. In such cases, the CRA reviews the proposed transaction or series of transactions and issues an advance income tax ruling that provides the CRA's interpretation of the manner in which the law's provisions would be applied.

Figure 2 – Number of Advance Income Tax Rulings and Percentage of Advance Income Tax Rulings Completed Within 90 Days of Receiving All Essential Information from the Taxpayer, 2009–2010 to 2014–2015



Note: The percentage of advance income tax rulings completed within 90 days of receiving all essential information from the taxpayer is not available for the 2009–2010 to 2011–2012 period.

The Canada Revenue Agency's target for the percentage of advance income tax rulings completed within 90 days of receiving all essential information from the taxpayer is 85%.

Source: Figure prepared using data obtained from: Canada Revenue Agency, *CRA Annual Reports to Parliament*, 2009–2010 to 2014–2015.

As well, educational and preventative programs exist to improve tax compliance by small businesses. For example, through the Liaison Officer Initiative, selected small businesses are provided with in-person support to help them prevent errors and comply with their tax obligations.

In January 2014, the CRA announced its intention to introduce a mandatory registration system for certain tax advisors. The Registration of Tax Preparers Program will require tax advisors who are paid to prepare an individual or corporate income tax return to register with the CRA. This registration will allow the CRA to connect each tax return to a particular tax advisor, identify tax advisors who prepare inaccurate returns, and link these advisors to taxpayers suspected of tax avoidance or evasion. According to the Canada Revenue Agency's *Report on Plans and Priorities 2016–2017*, the CRA will launch the program in October 2016.

The CRA also has programs aimed at detecting tax avoidance and evasion. These programs include the Offshore Tax Informant Program, a requirement that certain international electronic funds transfers (EFTs) be reported, and the ability to obtain information on certain taxpayers from third parties. Regarding offshore tax compliance, the

CRA's Offshore Compliance Division – which was established in 2013 – has implemented a number of initiatives, and employs specialized teams that are responsible for conducting offshore compliance audits.

Established in 2014, the Offshore Tax Informant Program provides financial rewards to individuals who provide information regarding offshore tax non-compliance that leads to the assessment and collection of additional federal tax in an amount that exceeds $100,000.

Moreover, since January 2015, banks, credit unions, caisses populaires, trust and loan companies, money services businesses and casinos have been required to report international EFTs of $10,000 or more in a single transaction to the CRA. These entities are already reporting information on certain international EFTs to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

Lastly, the CRA can seek court authorization to issue, to a third party, a requirement to provide information in relation to unnamed persons. These third parties, such as financial institutions, may have information that can assist in verifying whether particular entities have complied with their tax obligations.

3. Enforcement and Prosecution Regarding Tax Avoidance and Evasion

To ensure compliance with Canada's tax regime, the CRA is also focused on verifying tax returns for errors and/or omissions and on ensuring that tax offences do not go unpunished.

When the CRA suspects that aggressive tax planning is occurring or has occurred, it initiates an assessment, reassessment or additional assessment of the relevant taxpayer. When it finds that the taxpayer has used an aggressive tax planning measure, he/she is liable for the assessed taxes and any interest owing. Furthermore, section 237.3 of the ITA provides for general penalties to be applied when the taxpayer fails to report taxable transactions, such as income received, to the CRA.

When a taxpayer disagrees with an assessment or a determination by the CRA, an objection may be filed. The case is then referred to the CRA's Appeals Division, which has the mandate to review such cases in a fair and impartial manner. If the taxpayer disagrees with the Division's decision, he/she may make an appeal to the Tax Court of Canada.

The general procedure for prosecution under section 239 of the ITA begins when the CRA refers the taxpayer's file to its Criminal Investigations Program (CIP). Employees of the CRA's CIP have the mandate to investigate significant cases of tax evasion and, where appropriate, to refer these cases to the Public Prosecution Service of Canada (PPSC) for criminal prosecution. A primary focus of the CIP is the pursuit of "significant cases of tax evasion with an international element." The CIP works in partnership with the Royal Canadian Mounted Police, and may share relevant taxpayer information with law enforcement agencies when there are reasonable grounds to believe that the information

indicates the existence of a serious criminal offence; these offences include tax evasion or fraud under section 380 of the *Criminal Code*.

As an alternative to prosecuting taxpayers under section 239 of the ITA, the Crown may – in serious cases – lay charges for fraud under section 380 of the *Criminal Code*. Prosecution under section 380 can result in a prison term of up to 14 years. A two-year minimum sentence is imposed if the taxpayer defrauded the government by an amount that exceeds $1 million.

As well, tax advisors may face criminal sanctions for fraud. According to section 21(1) of the *Criminal Code*, a person is a party to an offence if he/she "does or omits to do anything for the purpose of aiding any person to commit the offence; or abets any person in committing it." Moreover, section 22(1) of the Code stipulates that counselling another person to be a party to an offence makes the counsellor a party to that offence, provided that the person who has been counselled goes on to commit the crime.

At any point up to and including 10 years prior to the current taxation year, the Minister of National Revenue may give a taxpayer relief from penalty or interest costs that the CRA has assessed. These costs may be waived in the following situations: extraordinary circumstances, such as natural disasters or serious illness; errors for which the CRA is at fault; financial hardship; and, at the discretion of the Minister, any other circumstance.

The Minister may take such an action in an effort to entice taxpayers who are suspected to be engaging in a tax avoidance or evasion scheme to provide information on that scheme. The CRA can then use this information to investigate other parties to the scheme and/or to adapt their investigative techniques to facilitate the detection of similar schemes in the future.

4. International Efforts to Address Avoidance and Evasion

Under the exchange of information provisions found in tax treaties, bilateral tax information exchange agreements (TIEAs) or the *Convention on Mutual Administrative Assistance on Tax Matters*, the CRA exchanges selected tax information with tax authorities in other jurisdictions.

Table 1 – Tax Information Exchange Agreements Entered Into by Canada

Tax Information Exchange Agreements In Force	Signed but not yet in force	Under Negotiation
Anguilla, Aruba, Bahamas, Bahrain, Bermuda, British Virgin Islands, Brunei, Cayman Islands, Costa Rica, Dominica, Guernsey, Isle of Man, Jersey, Liechtenstein, Netherlands Antilles, Panama, San Marino, Saint Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, Turks and Caicos Islands and Uruguay	Cook Islands	Antigua and Barbuda, Belize, Gibraltar, Grenada, Liberia, Montserrat and Vanuatu

Source: Table prepared using data obtained from: Department of Finance Canada, *Tax Information Exchange Agreements*, accessed 14 June 2016.

As well, the OECD is overseeing a number of international efforts to combat tax avoidance and evasion. In 2013, it launched the Base Erosion and Profit Shifting (BEPS) project, which deals with tax avoidance by multinational corporations, and released its final reports and a set of non-binding recommendations in 2015. It has also developed a common reporting standard, which sets out the minimum requirements for the automatic exchange of financial account information collected by financial institutions.

Finally, various jurisdictions – including Canada – participate in international fora focused on developing best practices regarding tax administration. Such fora include the Forum on Tax Administration and the Global Forum on Transparency and Exchange of Information for Tax Purposes, both of which are OECD bodies.

5. Codes of Conduct and Other Professional Obligations

CRA employees are subject to a number of obligations in relation to their conduct, including under the Code of integrity and professional conduct, the Values and Ethics Code for the Public Sector and the Directive on conflict of interest, gifts and hospitality, and post-employment. For example, the Directive requires CRA employees to refuse any prohibited gifts, such as cash and tickets to entertainment or sporting events, and to report offers of such gifts and of any other gift, hospitality or benefit that is regularly offered or that exceeds $50 in value. In addition, CRA employees must comply with section 241 of the ITA, which – subject to a number of exceptions – prohibits them from sharing or disclosing information on taxpayers or on files on which they have worked.

Accounting professionals are subject to provincial/territorial legislation, as well as codes of professional conduct developed by each provincial and regional body that represents the accounting profession. For example, Rule 201.1 of the *Rules of Professional Conduct of the Chartered Professional Accountants of Ontario* stipulates that "[a] Member, Student, Applicant, membership candidate or firm shall act at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest." The standards adopted by provincial and regional bodies that represent

the accounting profession are aligned with the Code of Ethics for Professional Accountants issued by the International Ethics Standards Board for Accountants.

As well, accounting firms have internal codes of conduct. For example, KPMG's standards of ethical conduct are set out in its Global Code of Conduct, which it adopted in 2005 and updated in 2012. It applies to KPMG employees and partners around the world.

B. What the Witnesses Said

Witnesses appearing before the Committee commented on the CRA's measures designed to enhance tax compliance, and to detect tax avoidance and evasion. They also discussed the extent to which Canadians comply with their tax obligations, and on factors that may affect tax non-compliance. As well, they focused on the CRA's enforcement and prosecution efforts in relation to tax non-compliance, international efforts to address tax avoidance and evasion, and the integrity of CRA employees and tax advisors.

1. The Canada Revenue Agency's Measures to Enhance Compliance, and Address Tax Avoidance and Evasion

In speaking to the Committee about measures that are effective in enhancing compliance with tax obligations, KPMG highlighted that it is important for tax authorities to engage in discussions with taxpayers and tax advisors on an ongoing basis in order to keep them informed about the types of tax planning arrangements that are acceptable. It also identified the requirements placed on taxpayers and tax advisors to notify the CRA when a tax arrangement involves a contingency fee or a confidentiality agreement, or is designed to obtain a tax benefit.

Regarding advance income tax rulings, Canadians for Tax Fairness indicated that tax advisors generally do not request such rulings from the CRA. It pointed out that U.S. tax advisors are required to register all tax products, and suggested that the adoption of a similar requirement in Canada would help to address tax avoidance. KPMG said that advance income tax rulings are rarely sought, although they are being requested more frequently. According to it, obtaining such rulings is a lengthy and costly process.

The CRA commented on the VDP, noting that a taxpayer who participates in this program engages in a process that is entirely distinct from that involving a negotiated settlement agreement. It mentioned that the number of voluntary disclosures has increased by 400% over the last six years. André Lareau – who appeared as an individual – was of the view that, in cases of voluntary disclosures involving funds held offshore, the Minister of National Revenue should not use her discretion to cancel or reduce either interest or penalties because the funds could be linked to fraudulent transactions. He also said that, compared to similar programs in other countries, the VDP is too lenient; international programs provide taxpayers with a more limited time frame within which to engage in disclosure without facing penalties.

Regarding compliance by small businesses with their tax obligations, the CRA indicated that – instead of audits – it is increasingly trying to educate and provide timely

support to such businesses; particular mention was made of the Liaison Officer Initiative, which was introduced in 2014.

The CRA highlighted a number of measures that have been implemented in recent years to improve the detection of offshore tax evasion and aggressive tax planning in Canada. In particular, it noted that it now has access to more and better information, and is targeting offshore tax compliance more effectively. Arthur Cockfield, who appeared as an individual, also held the view that measures adopted by the federal government over the last three years, such as dedicating more resources to auditing, have been helpful.

Mr. Cockfield also characterized implementation of the CRA's Offshore Tax Informant Program as a very positive change. He mentioned that whistleblower initiatives can be very effective for detecting offshore non-compliance, and provided an example involving the United States, where tax authorities recovered billions of dollars in a tax evasion case that was first revealed by a whistleblower.

The CRA said that, in 2013, it created both a new Offshore Compliance Division and specialized teams dedicated to offshore tax compliance, and that it has reorganized its CIP to focus on severe cases of tax evasion. The CRA also indicated that, in April 2016, it created a new branch that is focused solely on multinational and large corporations, aggressive tax planning and criminal investigations.

Furthermore, the CRA explained that the mandatory reporting of certain international EFTs, which has been a requirement since January 2015, helps it to target jurisdictions and financial institutions of concern. Similarly, the Minister of National Revenue stated that this information will be used to target up to four jurisdictions each year for further investigation; the Isle of Man will be the first such jurisdiction. The CRA indicated that it is investigating up to 800 Isle of Man accounts.

The CRA noted that the streamlined process for obtaining information from third parties on unnamed persons suspected of tax non-compliance allows it to receive such information more quickly. As an example, the CRA mentioned that it sought court authorization to require the Royal Bank of Canada (RBC) to provide information on clients linked to the Panamanian law firm Mossack Fonseca; it added that RBC will not be opposing this request, which should result in information being made available in a timely manner. As well, the CRA said that the Foreign Income Verification Statement was changed in 2013 to introduce more detailed and rigorous reporting requirements for taxpayers with assets in foreign jurisdictions.

As well, the CRA stated that – in relation to corporations with annual revenue exceeding $250 million – it has implemented a risk-assessment system based on an algorithm that takes 200 variables into account. It explained that all corporations that are identified as having a high risk of non-compliance are audited. According to it, the implementation of this system has allowed the CRA to increase the amount of taxes collected through audits of large corporations. The CRA further noted that the reputation of a tax practitioner and his/her current behaviour influence its decision about whether to undertake an audit.

The CRA also noted that its efforts to address offshore tax compliance are supported by increased resources; it said that it currently has 20% more auditors than it did in 2006. It commented that the funds announced in the 2016 federal budget for the CRA would be used, among other things, to hire more auditors and specialists in order to increase the number and quality of examinations of high-risk individuals, multinational corporations, and entities that create and promote tax avoidance schemes.

According to Réseau pour la justice fiscale Québec, while it is encouraging that the federal government is providing the CRA with additional funding, this funding will barely compensate for the reductions that have occurred in recent years, and will help to address tax avoidance and evasion only in a marginal way. The Chartered Professional Accountants of Canada supported this additional funding for the CRA, and stated that the federal government should consult with taxpayers and a range of stakeholders as it moves forward with its efforts to address tax avoidance and evasion. Mr. Cockfield suggested that, going forward, an ongoing commitment from the CRA's senior management is required to address offshore tax evasion.

As well, Réseau pour la justice fiscale Québec mentioned that – in its view – the federal government is not very committed to addressing the issue of tax havens, noting that world leaders in a number of countries commented on the leak of the "Panama papers" in a more forceful manner than did Canada's Prime Minister. It also suggested that, in addition to the CRA, the Office of the Prime Minister, Global Affairs Canada and the Department of Finance should be involved in Canada's efforts to address the issues raised by the "Panama papers."

According to Canadians for Tax Fairness, the federal government should consider amending the ITA to oblige tax advisors to report suspected situations of tax avoidance or evasion to tax authorities; specific mention was made of the regime currently in place in the United Kingdom.

In order to detect offshore tax evasion better, Mr. Cockfield emphasized the need for better coordination between FINTRAC and the CRA in relation to suspicious financial transactions reports received by the former.

2. Extent of, and Factors Affecting, Tax Non-Compliance

The CRA told the Committee that the voluntary tax compliance rate of Canadian taxpayers, which exceeds 92%, is among the highest in the world, and KPMG agreed that Canadians generally comply with the country's tax rules. In order to improve its measurement of non-compliance, the CRA indicated that it is undertaking a comprehensive study of methodologies to estimate Canada's tax gap, or the amount of tax revenue that is not collected. KPMG mentioned that a number of jurisdictions currently analyze their tax gap, and that the largest component of the gap often is the underground economy.

Réseau pour la justice fiscale Québec said that the tax gap should be assessed from a sociological perspective. It explained that, from this perspective, the analysis of the tax gap should not be limited to an estimation of the amount of tax revenue that is not

collected; it should also take other consequences of offshore tax avoidance and evasion into account. In particular, it suggested that tax revenue losses due to offshore tax avoidance and evasion have prompted governments to lower corporate tax rates in an effort to reduce the flow of capital to offshore jurisdictions, further reducing tax revenue; as a result, governments have had to borrow more, reduce spending and/or impose fees on public services that were previously available to the population at no cost.

According to Canadian for Tax Fairness, Canada's federal and provincial governments lose between $5.3 billion and $7.3 billion annually as a result of tax avoidance and evasion. It also spoke about the book *The Hidden Wealth of Nations*, whose author concluded that about $300 billion, or 9% of total Canadian wealth, is held offshore; this proportion exceeds that in the United States, at 4%. Mr. Cockfield said that an estimated $10 trillion to $35 trillion worldwide is hidden in offshore tax havens, while Réseau pour la justice fiscale Québec indicated that about $21 trillion are circulating in tax havens.

In commenting on tax haven-enabled tax avoidance and evasion, Réseau pour la justice fiscale Québec identified two key components of the problem: tax evasion by individuals who transfer funds into tax havens and rely on the secrecy provided by these jurisdictions; and multinational corporations that use tax havens when structuring their affairs with a view to avoiding the payment of taxes in the countries in which they operate.

Réseau pour la justice fiscale Québec observed that, in many cases, tax havens allow entities – such as "exempted companies" or special types of holdings – to be created within their jurisdiction; such an entity is subject to few – if any – controls in relation to the identity of the beneficial owners, and its creators do not have to pay taxes on the assets held by the entity, so long as it does not have any operations in the tax haven. It emphasized that, by allowing the creation of such entities within their jurisdiction, tax havens effectively legislate on the activities of corporations that are not located within their jurisdiction, thereby neutralizing the legislation of the countries in which these corporations operate.

As well, Réseau pour la justice fiscal Québec suggested that the federal government should consider diplomatic means by which to address the use of tax havens. For example, it said that the government – either through its embassies or through the Minister of Foreign Affairs – could signal to tax havens that, to the extent that their legislation applies to the activities of corporations that are not located within their jurisdiction, they are exceeding their legislative authority.

In speaking to the Committee about factors that may affect tax compliance, the CRA stated that changing societal norms are enhancing compliance because businesses and individuals are increasingly concerned about the reputational impact of being involved in a tax dispute. KPMG commented that cultural differences may explain varying levels of compliance across countries, noting that some countries – such as Greece – have a large underground economy.

The Chartered Professional Accountants of Canada and Mr. Lareau identified the income tax system's complexity as a key issue in relation to tax avoidance and evasion. According to Mr. Lareau, Canada's tax legislation has become more complex over time in order to address increasingly complicated tax planning strategies created by tax advisors. The Chartered Professional Accountants of Canada called for a comprehensive review of Canada's income tax system with a view to reducing its complexity, and making it more competitive, efficient, effective and fair. It noted that there has not been a full review of the income tax system since the 1966 Royal Commission on Taxation.

KPMG highlighted the importance of ensuring that taxpayers have trust in the tax system, and mentioned studies suggesting that individuals are more likely to comply with their tax obligations if they perceive that their neighbours are doing so. It also noted that there is a perception among Canadians that the international tax rules are unfair, due partly to their complexity and lack of transparency. According to KPMG, national tax systems do not reflect the global nature of business, with the result that many international tax rules are broken; it supported changes to those rules in order to instil trust in the tax system.

The CRA observed that, while Canadian taxpayers generally comply with their tax obligations, offshore tax evasion and aggressive tax planning remain a challenge. It indicated that growth in the level of international trade and foreign investment flows have led to increasingly complex multinational corporate structures, and more frequent use of certain offshore jurisdictions and profit-shifting schemes.

3. Enforcement and Prosecution Regarding Tax Avoidance and Evasion

In speaking to the Committee, the Minister of National Revenue said that the CRA's position regarding tax avoidance and evasion schemes is that all participants in such schemes must be identified and brought into compliance with their tax obligations. She added that the CRA also takes action against tax advisors who create opportunities for clients to participate in, or assist them in participating in, such schemes.

Mr. Cockfield expressed the view that, in order to create precedents for future cases, the CRA should increase its efforts regarding the prosecution of tax advisors who create aggressive tax planning schemes. He added that the ITA contains penalties that can be applied on tax advisors who engage in reckless, negligent or willfully blind behaviour, and suggested that the CRA should seek to impose these penalties more frequently. Similarly, Canadians for Tax Fairness said that the federal government should be more aggressive in pursuing individuals and corporations – including financial institutions, wealth management firms, law firms and accounting firms – that facilitate the use of tax havens by taxpayers. As well, it supported additional regulations for these types of organizations as an effective way to address the use of tax havens.

According to Mr. Lareau, given the complexity of Canadian tax laws, the only effective tool in addressing offshore tax evasion is stronger penalties for tax advisors who create sophisticated offshore tax evasion schemes; he said that, in such cases, serious consideration should be given to jail terms. KPMG mentioned that, in a number of

countries, tax advisors who develop tax evasion schemes may face criminal liability. It supported penalizing those who engage in these activities. Mr. Lareau stated that, in addition to tax advisors who create such schemes, those who are in charge of firms within which tax evasion is committed should be prosecuted.

The CRA stated that tax avoidance and aggressive tax planning involve taxpayers receiving a tax benefit that is contrary to the object or the spirit of the ITA, and said that it may reassess taxpayers when these situations are found to exist. Mr. Lareau observed that, in cases of tax avoidance, the burden of proof rests with the CRA, which has to demonstrate that abusive tax planning has occurred; he added that establishing that this situation has occurred can be difficult. According to the Canadians for Tax Fairness, the federal government should introduce legislation similar to Bill C-621, An Act to amend the Income Tax Act (economic substance), which was introduced in the 2nd session of the 41st Parliament and died on the *Order Paper* when the October 2015 general federal election was called. Bill C-621 would have required the Minister of National Revenue or the court to consider the economic substance of a transaction in determining whether it is a tax avoidance measure.

In her appearance before the Committee, the Minister of National Revenue stated that the CRA conducts more than 120,000 audits each year, resulting in more than $11 billion being collected in taxes, penalties and interest. She pointed out that at least two thirds of this amount involves cases of aggressive tax planning by large and multinational corporations, and by high net worth individuals.

According to the CRA, tax evasion is a criminal offence that involves a taxpayer making false or deceptive statements; such cases are taken to the PPSC, which then decides whether to proceed with prosecution. It noted that, to be successful, the Crown must prove beyond a reasonable doubt that the taxpayer committed tax evasion. In commenting on the investigation of tax evasion cases, Mr. Cockfield said that the Royal Canadian Mounted Police has virtually no resources to investigate white-collar crime; as a result, it cannot assist the CRA with these cases.

The CRA indicated that approximately 200 cases are referred to the PPSC annually. According to it, three to five years may elapse between the referral of a case to its CIP and the case being brought before a judge. The CRA also noted that, over the 2012–2015 period, 30 cases of tax evasion resulted in convictions.

Mr. Cockfield expressed concern about a lack of coordination between the CRA, which investigates potential tax evasion cases, and the Department of Justice, which is responsible for prosecuting those cases. He provided the example of a 2007 leak involving a Liechtenstein bank that revealed that more than 100 Canadian taxpayers had undisclosed offshore accounts in that country, and explained that – following a CRA audit of these taxpayers – only two were referred to the Department of Justice for prosecution; in the end, no one was prosecuted. Mr. Cockfield added that embedding tax lawyers within the CRA would help to address the lack of coordination between the CRA and the Department of Justice.

In discussing the importance of treating all taxpayers fairly, the CRA highlighted the recourse available to taxpayers who disagree with a decision it makes. It stated that a taxpayer who disagrees with an assessment may file an appeal and have his/her case reviewed at no cost; according to it, more than 90,000 appeals are resolved per year. The CRA also said that about 5,000 cases per year are litigated, with about 2,200 cases being heard in court and 3,000 involving negotiated settlement agreements.

The CRA outlined that, in deciding between negotiated settlement agreements and litigation, it reviews the facts of each case and consults the Department of Justice; together, they examine the risks, issues and legal precedents in order to develop a draft position about whether to pursue litigation or settlement. It indicated that this position is then taken to the Director of the CRA's Offshore Compliance Section; in turn, the CRA's Assistant Commissioner decides whether the matter will be pursued in court or a negotiated settlement agreement will be proposed.

The CRA said that it considers both the public interest and the Crown's interests in deciding between negotiated settlement agreements and litigation. It highlighted that litigating a tax matter is a lengthy process, with significant legal costs and an uncertain outcome; when pursuing litigation, the CRA cannot assume that the Crown will win.

Réseau pour la justice fiscale Québec stated the CRA sends an inappropriate signal when it negotiates reduced penalties for tax evaders, particularly when it justifies this practice by saying that doing so is less costly than pursuing litigation. It added that negotiated settlement agreements prevent legal precedents from being established and give rise to a legal regime wherein the application of the law can be bargained. According to it, the federal government should not undertake a cost/benefit analysis in determining whether the law should be applied.

Mr. Cockfield told the Committee that the use of negotiated settlement agreements is a common practice in criminal tax matters, and believed that such agreements are used consistently in Canadian criminal matters. He suggested that the leniency offered in these agreements should be examined separately from the use of settlement agreements as a tool.

According to KPMG, tax disputes are rarely litigated in Canada; rather, taxpayers often prefer a negotiated settlement agreement because of the uncertainty and legal costs involved with litigation. It also mentioned that, given that the court system is limited in the number of cases that can be heard, the CRA and taxpayers are encouraged to negotiate a settlement to avoid long delays.

In addition, the CRA indicated that – under specific circumstances – taxpayer relief is provided to approximately 400,000 individuals each year; the relief may involve the waiving of interest and/or penalties. Mr. Lareau spoke about streamlined procedures in the United States; in particular, in situations where a taxpayer's failure to report foreign financial assets is due to an honest mistake and the sums involved are small, penalties are limited to 5% of unreported assets for U.S. residents and 0% for non-residents.

Canadians for Tax Fairness advocated for an independent study of tax avoidance or evasion investigations initiated by the CRA; the study would identify the number of investigations that led to convictions or settlements, as well as the associated penalties and interest rates.

4. International Efforts to Address Avoidance and Evasion

The CRA told the Committee that it has 92 tax treaties and 22 TIEAs in place that allow the sharing of information among tax authorities, and that help it to identify and address tax non-compliance. The Minister of National Revenue mentioned that the CRA ratified the *Convention on Mutual Administrative Assistance in Tax Matters* in 2013, which has expanded the information-sharing network.

Réseau pour la justice fiscale Québec stated that, in order to address offshore tax avoidance, the federal government should reconsider the treaties that Canada has entered into with a number of tax havens, such as Barbados. It said that the Canada–Barbados Income Tax Agreement, and some other tax treaties, facilitate tax avoidance by essentially making it legal to engage in such behaviour. Moreover, it emphasized that Barbados is second to the United States as a destination for Canadian foreign investment, and suggested that these investments occur primarily in order to avoid taxation. KPMG mentioned that federal policy allows these corporations – under certain conditions – to use such jurisdictions as Barbados to finance their international expansion.

Furthermore, Réseau pour la justice fiscale Québec indicated that the federal government should re-examine subsection 5907(11) of the *Income Tax Regulations*; according to it, this subsection allows Canadian corporations to transfer assets to a tax haven and repatriate these assets tax-free if that jurisdiction has a TIEA with Canada.

In discussing international efforts to combat tax avoidance and evasion, the CRA stated that it is involved with the OECD's BEPS project. The Minister of National Revenue said that Canada, along with 30 tax treaty partners, have signed a Multilateral Competent Authority Agreement in order to implement country-by-country reporting for large multinational corporations, which is a BEPS recommendation. She explained that these new requirements are designed to ensure that these corporations pay taxes in the countries in which they operate, and that corporations will be required to provide more information to tax authorities regarding their operations. In addition, KPMG stated that the CRA will begin sharing advance income tax rulings with other jurisdictions, where appropriate, in accordance with a BEPS recommendation. It also mentioned its strong support for the BEPS project.

Réseau pour la justice fiscale Québec characterized the BEPS measures as encouraging but unsatisfactory because they do not address key tax avoidance mechanisms, such as patent boxes, or other important issues, such as electronic commerce. It explained that patent boxes allow multinational corporations to transfer ownership of intellectual property, such as patents, to affiliates located in tax havens; these affiliates then charge an overvalued amount to the corporation’s other entities for the use of that intellectual property in order to maximize the transfer of the corporation’s assets

to the affiliate located in the tax haven. It added that patent boxes are the most common transfer pricing mechanism that is used to avoid paying taxes.

As well, the CRA indicated that it is working on implementation of the OECD's common reporting standard, which will allow financial account information to be exchanged automatically among jurisdictions; the target date for implementation is 2018. Mr. Cockfield characterized the implementation of this standard as the most important international tax evasion-related initiative in which Canada is participating.

Réseau pour la justice fiscale Québec said that, by addressing the secrecy associated with certain tax havens, the automatic exchange of information among countries would allow a number of individual tax evaders to be identified; however, it would not help to address tax avoidance by multinational corporations because it is much more difficult to demonstrate that their affairs are organized in an illegal manner. In addition, it noted that such information exchanges may not help in identifying tax evaders in jurisdictions that do not require securities registers to be maintained, such as Hong Kong and the British Virgin Islands.

In speaking to the Committee about its involvement in various international tax-related fora, the CRA mentioned its participation in the OECD's Forum on Tax Administration, including the OECD's Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC); the JITSIC brings together tax administrators from various jurisdictions to develop measures designed to address tax avoidance and aggressive tax planning. It explained that, at a recent JITSIC meeting, it worked with participants to coordinate efforts in relation to the release of the "Panama papers."

In addition, the CRA said that it is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes, which works toward the implementation of internationally agreed standards on tax transparency. It added that – to date – 101 countries have committed to the Forum's standards, and that participating countries engage in a peer review process in relation to their taxpayer information protection measures; under this process, the CRA collaborates with the Department of Finance and information technology experts to assess potential risks when the CRA shares information about Canadian taxpayers with tax authorities in another country.

Regarding Canada's involvement with the OECD, Réseau pour la justice fiscale Québec commented that Canada is not particularly combative and does not have a good reputation regarding its efforts to combat tax avoidance and evasion. It explained that, while Canada participates in various OECD initiatives designed to address tax avoidance and evasion, it also represents 12 tax havens – including the Bahamas, Saint Vincent and the Grenadines, Saint Kitts and Nevis – at the World Bank and the International Monetary Fund. Furthermore, Réseau pour la justice fiscale Québec stated that some countries – such as France and the United States – are more advanced than is Canada in their efforts to combat offshore tax avoidance and evasion, noting that some U.S. multinational corporations have transferred their head office from that country to Canada solely for tax reasons. It added that, in order to control and monitor their activities better, France has implemented measures to require its banks to disclose information on their

assets and affiliates in other countries; these countries include tax havens. According to it, Canada should be more involved in international efforts to address offshore tax avoidance and evasion.

5. The Integrity of Canada Revenue Agency Employees and Tax Advisors

In explaining its post-employment policy to the Committee, the CRA said that a departing employee cannot accept a position at, represent or be appointed to the board of directors of a particular company if he/she has dealt with that company in the one-year period prior to his/her departure. It indicated that the departing employee's position, and the files on which he/she worked in the preceding year, are considered before a decision is made about whether he/she will be allowed to accept employment with the company in question. The CRA stated that section 241 of the ITA can be used to impose criminal sanctions on current or former CRA employees who divulge information pertaining to a taxpayer, or to a file on which they had worked during their employment with the CRA.

Regarding the means by which the CRA monitors former employees who are employed elsewhere, the CRA explained that its post-employment policy requires a departing employee to sign – and transmit to his/her new employer – a letter that details the obligations imposed on former CRA employees. According to the CRA, if a former employee breaches these obligations, legal proceedings can be initiated. KPMG stated that it asks all new employees to disclose any legal obligations that they have in relation to their former employer, and communicates the firm's expectation that they will comply with these obligations. It also said that, each year, employees are required to certify that they have complied with their obligations.

The CRA noted that most of its departing employees retire, and that only a very small number become employed by the four largest international accounting firms. KPMG commented that about seven or eight of its 1,400 tax professionals were previously employed by the CRA or the Department of Justice. It added that a similar number have left KPMG for employment with the CRA or the Department of Justice.

In mentioning relations with stakeholders, the Minister of National Revenue told the Committee that the CRA has a responsibility to listen to those affected by its policies and programs, which includes individual and corporate taxpayers, as well as tax advisors. The CRA indicated that more than 70% of its interactions with Canadians, whether individuals or corporations, occur through a tax intermediary. It noted, in all of their dealings with stakeholders, CRA employees are bound by their obligations under section 241 of the ITA. According to KPMG, open and transparent dialogue among taxpayers, tax advisors and tax authorities contributes to the proper functioning of Canada's tax system.

As well, the Minister of National Revenue stated that CRA officials meet with stakeholders in an effort to help them understand – and comply with – Canada's tax system, rather than to discuss specific files, while the CRA said that meetings with stakeholders – including those that occur at conferences – allow issues related to tax administration and unacceptable tax planning practices to be discussed. KPMG agreed that conferences provide tax advisors with a good opportunity to learn about practices that

may be of concern to the CRA. According to it, CRA employees should be allowed to continue attending such conferences.

Moreover, the Minister of National Revenue said that CRA employees avoid situations that could lead to a real or perceived conflict of interest or preferential treatment. KPMG commented that CRA employees must respect very stringent rules in relation to gifts and hospitality. It explained that firms often sponsor portions of conferences, such as coffee breaks, and that these are the sole sponsored event that CRA employees are permitted to attend. Canadians for Tax Fairness supported an investigation, by the Conflict of Interest and Ethics Commissioner, of what it described as the highly unusual hospitality practices of the CRA's senior executives.

The CRA indicated that its executives are accessible to Canadians, including to advocacy organizations, boards of trade, and accounting and bookkeeping firms; accessibility is not limited to large firms.

In its appearance before the Committee, Canadians for Tax Fairness spoke about one of its studies that was based on interviews with about 20 current and former CRA auditors; according to it, some of them felt that, because of political interference, the CRA had failed to follow through on a number of tax avoidance or evasion investigations involving "well-connected" companies or individuals. It said that CRA employees should be encouraged to share their concerns with the Public Service Integrity Commissioner. As well, Canadians for Tax Fairness supported a review of the *Public Servants Disclosure Protection Act* with a view to providing greater protection to whistleblowers. According to it, the Act should be expanded to apply to the private sector. Réseau pour la justice fiscale Québec indicated that political interference with public agencies is possible.

In discussing regulation of the accounting profession, which occurs through provincial legislation, the Chartered Professional Accountants of Canada stated that provincial regulators have codes of professional conduct for the accounting profession that are harmonized, and that meet or exceed the standards developed by the International Ethics Standards Board for Accountants. It said that these codes contain a disciplinary process to be used in cases of illegal practices, and that provincial regulators may impose sanctions and monetary fines or expel – from the profession – accountants who violate relevant codes. Canadians for Tax Fairness indicated that it reviewed all the disciplinary cases for the accounting profession that have involved unlawful conduct or behavior that could have affected the reputation of the profession since 1987; it pointed out that there were no cases involving offshore tax evasion.

KPMG commented on its Global Code of Conduct, which outlines the standards of ethical conduct applicable to its employees. It said that, among other things, the Code requires KPMG employees to act lawfully and with integrity, and to develop a relationship with tax authorities that is based on mutual trust and respect. In addition, it stated that its employees are required to attend a training course on ethics and integrity every two years.

CHAPTER THREE: OFFSHORE CORPORATE STRUCTURES

A. Background

In addition to speaking to the Committee about tax avoidance and evasion, CRA measures to enhance tax compliance and address non-compliance, enforcement and prosecution of tax offences, international tax compliance efforts and a variety of measures to which CRA employees and tax professionals are subject, witnesses also focused on offshore corporate tax structures. Their comments were both general and specific to the offshore corporate structure developed by KPMG and located on the Isle of Man. The background information on tax planning structures and on certain actions specific to the CRA and KPMG's offshore corporate structure on the Isle of Man provide context for the comments made by the Committee's witnesses.

1. Tax Planning Structures

Canada's tax law contains a number of provisions that allow taxpayers to minimize their taxes owing. One example of a tax planning structure that can help taxpayers do so is a trust. With a trust, an individual – known as the "settlor" – transfers legal ownership of his/her assets to a trustee, who holds those assets for the benefit of the person(s) named by the settlor. Because the settlor is no longer the legal owner of the assets, he/she has no tax obligations in relation to them. That said, under Canadian law, a trust that is located in Canada must report – and pay taxes owing on – both domestic and foreign income.

Non-resident trusts operated as a tax planning structure to minimize personal taxes owing until the ITA was amended in June 2013; the changes applied retroactively to 2007. Non-resident trusts operated in a manner that allowed a taxpayer to transfer funds into a trust located outside of Canada and give up his/her legal ownership of the funds; the trust was subject to taxation in the jurisdiction in which it was located, and both the taxpayer and the trust avoided Canadian taxation. Under Canadian law, the distribution of capital from a non-resident trust to its beneficiaries also occurred tax-free.

Individual Canadian residents must report and pay tax on all income, whether domestic or foreign, while multinational corporations are required to report and pay tax only on profits that are attributable to their domestic business activities. While this difference between the collection of individual and corporate taxes allows Canada to remain competitive in attracting and promoting international business, it is also the foundation for offshore corporate structures – or plans that involve the use of corporations in foreign jurisdictions – to minimize or evade taxes owing.

2. The Litigation in Relation to KPMG's Isle of Man Offshore Corporate Structure

According to public court records, on 12 June 2012, the CRA issued notice of assessments to members of a family residing in Victoria, British Columbia regarding unreported financial assets held within a corporation located on the Isle of Man. The CRA contends that this family transferred more than $25 million to this corporation without these assets being properly reported to the CRA; as a result, approximately $4 million was generated on a tax-free basis.

Documents filed with the Tax Court of Canada by the CRA argue that the transfer of these funds was meant to deceive the CRA, and that the Isle of Man offshore corporate structure – which had been developed by KPMG – existed as a "sham" created for this purpose.

The offshore corporate structure developed by KPMG and located on the Isle of Man allows KPMG clients to gift sums of money to an offshore corporation that would hold or invest that money for an indeterminate period of time. According to KPMG, the structure was designed for the purposes of estate planning, asset protection or philanthropic use; KPMG indicated that a tax benefit would also be present. KPMG believed that the structure operated as follows: KPMG clients would not own shares in the offshore corporation, and would not have legal ownership of the money gifted to the corporation; therefore, these clients would not be taxed on any interest or income resulting from the offshore corporation's investment activities. KPMG felt that this interest or income would fall under the Isle of Man's taxation system, which has a corporate tax rate of 0%. The offshore corporation could then gift the money to the KPMG clients and their families. Because gifts are generally not subject to taxation under Canadian tax law, KPMG believed that these clients and their families would receive the gifted money on a tax-free basis.

On 12 February 2013, the Minister of National Revenue applied for a court order requiring KPMG to provide the CRA with the names of its clients who took part in the Isle of Man offshore corporate structure. The court order, which was awarded on 18 February 2013, was immediately challenged by KPMG and remains unresolved.

The Canadian Broadcasting Corporation released a story on 8 March 2016 alleging that the CRA had confidentially offered what it characterized as an amnesty agreement to KPMG clients involved in the Isle of Man offshore corporate structure. The story contained an unverified copy of this agreement, which – if accepted – would relieve these KPMG clients from penalties or fines if they paid outstanding taxes and interest owing.

In a 9 March 2016 statement, the CRA acknowledged that it had discovered a "KPMG offshore tax avoidance scheme," and that 15 KPMG clients whose identities were being sought through the court order had identified themselves. It also explained that – on a case-by-case basis – the CRA will use negotiated settlement agreements with confidentiality clauses.

B. What the Witnesses Said

During the Committee's study, witnesses discussed the operation of non-resident trusts and offshore corporate structures, the development and implementation of tax planning products and services viewed through three lenses, confidentiality and the accounting profession, the use of negotiated settlement agreements by the CRA, and the CRA's specific interactions with KPMG in relation to the Isle of Man offshore corporate structure.

1. Offshore Corporate Structures

In his appearance before the Committee, Mr. Lareau characterized any tax structure that facilitates the transfer of funds to offshore corporations, only to have the funds transferred back to Canada, as a structure that facilitates tax evasion because the true objective of such transfers is to circumvent Canadian tax law. He argued that, under Canadian tax law, gifts must be made by an individual with no expectation of receiving compensation in return; the transfer of funds to offshore corporate structures do not constitute a gift because there is an expectation of future repayment. Mr. Lareau also highlighted that there is a range of ways in which to conceal funds in Canadian corporate structures, and said that the CRA ought to be concerned about them.

KPMG noted that it developed the offshore corporate structure on the Isle of Man and implemented it 16 times for a total of 27 individuals. Furthermore, it said that – except for a single implementation in 2007 – it did not implement this offshore corporate structure after 2003. KPMG mentioned that the average fee charged for each implementation of its Isle of Man offshore corporate structure was a fixed sum of approximately $100,000, resulting in total revenue of approximately $1.6 million.

2. Tax Planning Products and Services Viewed Through Three Lenses

KPMG explained to the Committee that its current practices require any tax planning product or service that it develops to be scrutinized through three different lenses: legality; possible interactions with GAAR; and impacts on the firm's reputation. It commented that the way in which it considers these lenses has evolved over time, suggesting that any review of its past actions must be mindful of the period during which those actions were taken. KPMG stated that it currently does not provide Canadian individuals or businesses with tax-sheltering advice. It also noted that it conducts background checks on clients to assess their reputation and financial means, among other things; it does not serve clients who engage in tax evasion.

Regarding the lens of legality, KPMG said that – prior to the introduction of the GAAR in 1988 – the primary consideration in the development of any tax planning product or service was whether it was "legally effective." According to it, this first lens examines whether a proposed tax planning product or service will accomplish its objectives while being consistent with the strict wording of the law.

KPMG stated that, when the Isle of Man offshore corporate structure was developed, the structure complied fully with applicable tax law. It outlined that the structure

underwent a detailed technical review by two KPMG partners, a KPMG general anti-avoidance committee, and an independent legal firm in both Canada and the Isle of Man; the structure was then approved by the managing partner of KPMG's national tax practice prior to implementation.

Moreover, KPMG explained that its Isle of Man offshore corporate structure was developed and first implemented in 1999, when tax planning was significantly different than it is today. It indicated that, during this period, non-resident trusts were permitted under Canadian law; the legislation that effectively eliminated them as tax planning vehicles was not passed for another 14 years, which was applied retroactively to January 2007. KPMG suggested that, at one point, the federal government encouraged non-resident trusts as a method to attract affluent non-residents to immigrate to Canada by allowing them to keep some of their funds in jurisdictions with lower levels of taxation.

According to KPMG, when the GAAR was introduced in 1988, the behaviour of accounting firms changed dramatically. It commented that, thereafter, accounting firms needed to examine their tax planning products and services through a second lens to ascertain their consistency with the spirit of the ITA, or produced a tax benefit other than what was intended by Parliament.

Regarding the tax planning products and services that it develops, KPMG stated that a third lens – the impact of a product or service on the firm's reputation – has been developing over the last 12 to 13 years. In particular, KPMG now questions whether it would support one of its tax planning products or services if the product or service were to be placed under public scrutiny; when viewed through this lens, a tax product or service that is both legal and compliant with the GAAR may still not be implemented by KPMG. It emphasized that, by 2006, independent partner committees reviewed any significant tax planning product or service developed by KPMG in order to assess the risks to the firm's reputation, and to ensure that the tax planning product or service was consistent with the accounting sector's professional standards.

In assessing its Isle of Man offshore corporate structure through the reputational lens, KPMG stated that the existence and legality of non-resident trusts at the time of the structure's implementation – as well as general accounting practices of the day – supported the structure's use. Moreover, it explained that an assessment through the reputational lens was an important factor in deciding to stop implementing the structure.

3. Confidentiality and the Accounting Profession

The CRA told the Committee that it is seeking the list of clients involved in KPMG's Isle of Man offshore corporate structure because it wants to ensure that each participant meets his/her tax obligations and/or faces the legal consequences for failure to do so.

KPMG explained that it had challenged the Federal Court's order to disclose the names of its clients involved in the Isle of Man offshore corporate structure because client confidentiality is a KPMG practice and a cornerstone of the accounting profession. It stated that it has both a legal and a professional obligation to keep client information confidential,

and that the accounting profession depends on confidentiality. KPMG stressed that it opposed the court order on principle for two reasons: the precedent it would set for future client confidentiality issues; and the impact that the precedent would have on the accounting profession as a whole.

The Chartered Professional Accountants of Canada remarked that, in order to maintain an effective self-assessment tax system, it is important to balance the CRA's need for objective information with the taxpayer's desire for confidential advice. It suggested that confidential tax advice is beneficial to the Canadian tax system; such an approach facilitates frank and transparent dialogue between tax advisors and their clients, which enables clients to disclose their complete tax history and thereby be appropriately counselled.

In mentioning the ITA, Mr. Lareau indicated that – unlike the relationship that exists between lawyers and notaries and their clients –, discussions between accountants and their clients are not privileged. Mr. Cockfield added that the issue of privilege becomes complicated in accounting firms that have affiliated law firms; an accountant's opinions may be based on the advice provided by one of the firm's lawyer, and the privilege granted to the lawyer may carry over to the accountant when he/she transmits that advice to clients.

4. The Use of Negotiated Settlement Agreements by the Canada Revenue Agency

Some of the Committee's witnesses identified their inability to discuss specific matters regarding KPMG's Isle of Man offshore corporate structure, any negotiated settlement agreement, information or documents posted in media outlets, or matters concerning KPMG and the CRA that are currently before the courts.

KPMG stated that settlement privilege – the confidentiality granted in law to all matters that are part of the terms of settling a case before the courts – prevents it from publicly discussing any negotiated settlement agreement between it and the CRA regarding the Isle of Man offshore corporate structure, any restitution that it may or may not have paid as a result of any settlement with the CRA, and the names of any CRA employees with whom it dealt during the CRA's investigation of the Isle of Man offshore corporate structure.

Regarding the unconfirmed negotiated settlement agreements with participants in KPMG's Isle of Man offshore corporate structure posted by the media, the Department of Justice noted that section 241 of the ITA prohibits CRA employees from disclosing taxpayer information, and that the details of any negotiated settlement agreements entered into with the CRA would qualify as taxpayer information.

In speaking about negotiated settlement agreements generally, the CRA explained that these agreements tend to require the payment of all outstanding taxes within 60 days, and therefore guarantee that these amounts are recovered. The CRA emphasized that it has an obligation to maximize value for taxpayers, which involves weighing the strength of

its legal position and evidence against the uncertain and costly nature of litigation. The CRA stressed that it will sometimes pursue litigation on principle, and risk the possibility of not recovering any taxes owing.

While the CRA could not confirm to the Committee that the negotiated settlement agreement posted by the media in relation to KPMG's Isle of Man offshore corporate structure is authentic, it commented on the agreement's characteristics and the CRA's usual practices. The CRA noted that the agreement posted by the media would allow for the collection of outstanding taxes dating back 15 to 16 years, which is exceptional. It stated that a traditional compliance review of businesses and high net worth individuals generally examines between two and four previous tax years and that, in cases of aggressive tax planning, the CRA usually undertakes a six-year review. The CRA explained that it can justify the examination of 16 tax years in exceptional cases only, and that penalties – such as the "gross negligence penalty" – are pursued in less than 1% of all cases.

The CRA mentioned that, when compared to a traditional six-year audit of cases involving aggressive tax planning, the recovery of taxes owing that date back 15 to 16 years would likely double the amount that the CRA would receive. Furthermore, it underlined that the alleged negotiated settlement agreement between KPMG clients and the CRA that was posted by the media indicates that no immunity from criminal prosecution would be granted to any party that consented to the agreement's terms. As well, the CRA highlighted that a taxpayer signing such an agreement would have waived his/her right to appeal or to object to the CRA's assessment of their outstanding taxes.

Concerning the number of alleged negotiated settlement agreements concluded with those using KPMG's Isle of Man offshore corporate structure, the CRA explained that it could not confirm that any agreements had been concluded, but noted that the CRA had been seeking the names of 21 KPMG clients in its action before the court, and is now seeking the names of only six clients.

In relation to cases involving Isle of Man offshore corporate tax planning structures, Mr. Lareau called on the Minister of National Revenue to refuse negotiated settlement agreements, and said that these cases should instead be pursued in court.

5. The Canada Revenue Agency's Interactions with KPMG in Relation to the Isle of Man Offshore Corporate Structure

The CRA provided the Committee with an independent review of its management of the discovery and handling of KPMG's Isle of Man offshore corporate structure. According to it, this review – which was conducted by a former dean of Dalhousie University's Schulich School of Law – found that the CRA had acted appropriately.

Regarding its Isle of Man offshore corporate structure, KPMG stated that no CRA employees were involved in the development of the structure, and that it did not seek an advance income tax ruling to ascertain the structure's level of compliance with applicable tax legislation.

The Minister of National Revenue commented that the CRA does not – and will not – offer amnesty to any taxpayer; the negotiated settlement agreements it offers carry an appropriately punitive element in the repayment of taxes owing. The CRA believed that negotiated settlement agreements are an appropriate tool to be used in meeting its obligations to the Crown and to Canadian citizens. It added that, where appropriate, the CRA remains willing to settle any tax-related cases that are currently before the courts.

Finally, according to the Minister of National Revenue, the CRA is actively targeting taxpayers who hide income or assets offshore, or evade the taxes that they owe.

CHAPTER FOUR: THE COMMITTEE'S RECOMMENDATIONS

The Committee recommends that:

Recommendation 1

The Minister of National Revenue conduct a comprehensive review of the advance tax ruling process. As part of that review, the Minister should identify ways in which efficiency and timeliness could be improved, costs could be reduced and effectiveness could be increased. This review should be completed by 31 March 2017.

Recommendation 2

The Minister of National Revenue require tax advisors operating in Canada to register all of their tax products with the Canada Revenue Agency.

Recommendation 3

The Canada Revenue Agency conduct a comprehensive review of its Voluntary Disclosures Program. As well, it should review the guidelines that are used to determine whether to pursue litigation or to seek a settlement with individuals or organizations that have engaged in tax avoidance or tax evasion. These reviews should be completed by 31 March 2017.

Recommendation 4

The Minister of National Revenue strengthen protections for individuals under the Informant Leads Program and the Offshore Tax Informant Program. As well, the Minister should ensure that these programs are properly incentivized and that all credible information that is obtained through them is properly investigated.

Recommendation 5

The Minister of National Revenue report to the House of Commons Standing Committee on Finance regarding the progress of audits in relation to the "Panama papers." The report should be made before 1 June 2017.

Recommendation 6

The Canada Revenue Agency enhance its technical, human resource and other capabilities in respect of – and knowledge about – domestic and international aggressive tax planning.

Recommendation 7

The Minister of National Revenue ensure that the Canada Revenue Agency calculate Canada's federal tax gap on an ongoing basis. As well, the Agency should make information about the size of that gap, and the methodology used to calculate it, publicly available.

Recommendation 8

The federal government, in an effort to reduce complexity and any inequities that distort behaviour and can lead to tax avoidance or tax evasion, accelerate its review of the *Income Tax Act* and expeditiously implement initiatives aimed at simplifying the income tax system. This review should be completed by 30 June 2017. The House of Commons Standing Committee on Finance should study those initiatives and any resulting proposed legislative amendments as part of its planned review of the Act.

Recommendation 9

The federal government take steps to improve coordination between the Canada Revenue Agency, which investigates situations of possible tax evasion, and the Department of Justice, which prosecutes cases of tax evasion.

Recommendation 10

The Minister of National Revenue, by 31 August 2017, establish a regular reporting program for the Canada Revenue Agency that would facilitate the public availability of statistical information about enforcement efforts in relation to tax evasion and tax avoidance schemes. The reporting program should identify the number of investigations leading to convictions or settlements, and associated penalties and interest rates, as well as enforcement efforts in relation to high-risk individuals and corporations.

Recommendation 11

The federal government review the 92 tax treaties and 22 tax information exchange agreements to which Canada is a party in order to ensure that they do not facilitate non-compliance with tax laws, particularly with respect to the secrecy associated with certain jurisdictions and their banking practices. This review should be completed by 31 August 2017.

Recommendation 12

The Minister of National Revenue address offshore non-compliance with tax laws through greater collaboration with other jurisdictions, including through enhanced joint audits with tax treaty partners.

Recommendation 13

The Canada Revenue Agency take a lead role in ensuring global implementation of the recommendations by the Organisation for Economic Co-operation and Development and the Group of Twenty in relation to their Base Erosion and Profit Shifting Project.

Recommendation 14

The Minister of National Revenue conduct a broad-based review of the Canada Revenue Agency's code of conduct for current employees and employees who are leaving the Agency. This review should be completed by 31 March 2017.

APPENDIX A
LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
As an individual	2016/05/03	17
Mahmud Jamal, Counsel to Gregory Wiebe		
KPMG		
Gregory Wiebe, Partner		
Canada Revenue Agency	2016/05/05	18
Ted Gallivan, Assistant Commissioner, International, Large Business and Investigating Branch		
Stéphanie Henderson, Manager, Offshore Compliance Section		
Diane Lorenzato, Assistant Commissioner, Human Resources Branch		
Andrew Treusch, Commissioner of Revenue and Chief Executive Officer		
Department of Justice		
Lynn Lovett, Assistant Deputy Minister, Tax Law Services Portfolio		
Canada Revenue Agency	2016/05/19	23
Ted Gallivan, Assistant Commissioner, International, Large Business and Investigating Branch		
House of Commons		
Diane Lebouthillier, Minister of National Revenue		
As individuals	2016/06/07	27
Arthur Cockfield, Professor, Faculty of Law, Queen's University		
André Lareau, Professor, Faculty of Law, Université Laval		
Canadians for Tax Fairness		
Scott Chamberlain, General Counsel, Association of Canadian Financial Officers		
Dennis Howlett, Executive Director		
Chartered Professional Accountants of Canada		
Joy Thomas, President and Chief Executive Officer		
Réseau pour la Justice fiscale Québec	2016/06/14	29
Alain Deneault, Researcher		

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* (Meetings Nos. 17, 18, 23, 27, 29 and 36) is tabled.

Respectfully submitted,

Hon. Wayne Easter
Chair

Supplementary Opinion of the Conservative Party of Canada

Introduction

The Canada Revenue Agency (CRA) defines the term "tax avoidance" as any taxpayer activity that minimizes tax payable by contravening the object and spirit – but not the letter – of the law. This is different than "tax evasion" which CRA defines as the deliberate underreporting of tax payable by concealing income or assets, and by making false statements. The Conservative Party of Canada stands with ordinary Canadians, who work hard, pay their taxes and play by the rules.

On April 11, 2016, the Honourable Diane Lebouthillier, Minister of National Revenue, announced that the Government of Canada will invest $444.4 million over five years to enhance the ability of the Canada Revenue Agency (CRA) to detect, audit, and prosecute tax evasion – both at home and abroad. The $444 million Liberal plan hopes to raise $2.7 billion over 5 years, "by hiring additional auditors and specialists; developing robust business intelligence infrastructure; increasing verification activities; and improving the quality of investigative work that targets criminal evaders."[1]

CRA will begin targeting different jurisdictions that are known to be tax havens, hire 100 new auditors and add lawyers to investigation teams to work directly with auditors. Additionally, CRA will create an Offshore Compliance Advisory Committee consisting of seven experts with significant legal, judicial and tax administrative experience. Finally, the government has signalled its intention to adopt the Consumer Reporting Standard which will require Canadian financial institutions as of July 1, 2017 to have procedures in place to identify accounts held by non-residents.

We are cautiously optimistic that the Government can build on our strong record. However, we are concerned that these expenditures will not provide the expected return on investment estimated in Budget 2016. We are also concerned that if these measures do not bear sufficient fruit, and without "duty of care" provisions in place, that a more robust CRA will begin to target ordinary Canadians and small businesses rather than any large corporations and high net-worth individuals practicing tax evasion.

The Conservative Party of Canada would like to thank all of the witnesses appearing before the committee for sharing their expertise.

The Conservative Record

More can be done, but there has been much success in recent years. Since 2006, the previous government, led by the Right Honourable Stephen Harper, introduced more than 85 measures intended to close tax loopholes and improve the fairness and integrity of the tax system.[2] For example:

- Budget 2013 introduced transformational changes to CRA's compliance programs that have improved the effectiveness and increased the integrity of the tax system by targeting high-risk tax evaders/avoiders. These changes were originally expected to result in additional revenues of $550 million per year by 2014/2015 but have achieved 1.5 billion [Table 1];

[1] Budget 2016
[2] http://www.cra-arc.gc.ca/nwsrm/fctshts/2015/m04/fs150410-eng.html

- Budget 2013 also invested $30 million over five years for the CRA to roll out new measures to combat international tax evasion and aggressive tax avoidance.

- The Voluntary Disclosure Program, a program that gives taxpayers the opportunity to voluntarily report unpaid taxes and avoid receiving a penalty has seen, since its inception, the number of taxpayers using this system increase dramatically.[3]

- The Offshore Tax Informant Program. Launched in January 2014, this program allows people who provide the CRA with information about tax-evasion to receive a 5-15% cut of any additional revenue the CRA collects as a result of the tip.

- A strengthened Foreign Income Verification Form. This measure introduced new reporting requirements for Canadian taxpayers with foreign property holdings to report more detailed information.

- Tax treaties and new tax information exchange agreements (TIEAs). Canada signed its first TIEA in 2009 and as of March 31, 2014, Canada was party to 92 tax treaties and 19 tax information exchange agreements.

- The Unnamed Persons Act. This measure streamlined the process for the CRA to obtain information concerning unnamed persons from third parties such as banks.

- Actions to close tax loopholes and improve fairness and integrity of the tax system were expected to provide $316 million of savings in 2013-2014, and rising to total $4.4 billion over five years.

Table 1: Estimated and Actual Savings (millions of dollars)

	2012-2013	**2013-2014**	**2014-2015**	**2015-2016**	**2016-2017**	**2017-2018**	**Total**
Budget 2013 CRA compliance programs	30	125	550	550	550	550	2,355
***CRA compliance programs (ACTUAL)[4]**	576	566	1500	TBD	TBD	TBD	TBD

Conclusion

We are cautiously optimistic that the Government can build on our strong record. However, we are concerned that these expenditures will not provide the expected return on investment estimated in

[3] http://www.cra-arc.gc.ca/nwsrm/fctshts/2015/m04/fs150410-eng.html
[4] www.cbc./ca/news/politics/cra-tax-compliance-evasion-revenue-1.3558863

Budget 2016. Given that the tax gap is not known, the better than expected outcomes of measures introduced by our Party while in power may have already attained much of the potential revenue.

If these measures do not bear sufficient fruit, and without "duty of care" provisions in place, a more robust CRA may begin to target ordinary Canadians and small businesses rather than any large corporations and high net-worth individuals practicing tax evasion.

NDP Supplementary Report: Canada Revenue Agency's Efforts to Combat Tax Avoidance and Evasion

> *"Athough the issue is complex, incredibly broad and quite shocking, the facts have been obscured for a long time. If they have gauged the impact of the issue, very few MPs or ministers have raised it, and the 'relevant' departments have been short-sighted." [Translation] – Alain Deneault, speaking on tax evasion*

Introduction

Tax havens are a serious threat to our economy and to Canadians' confidence in our system. Over the past eight years, we have witnessed many scandals, such as KPMG and the Isle of Man, the Bahamas Papers and Panama Papers, the tax evasion mechanism of the Swiss bank UBS, the Liechtenstein case and the Luxembourg leaks. It is estimated that aggressive tax avoidance and tax evasion result in an annual loss of $8 billion in tax revenue.

The New Democratic Party (NDP) is pleased that the House of Commons Standing Committee on Finance has undertaken a study of the Canada Revenue Agency's efforts to combat tax avoidance and evasion. This study was needed to highlight these serious modern-day problems and was especially important given recent revelations about KPMG.

We believe that the main report prepared by the Committee's analysts fairly and fully reflects the basic testimony heard by the Committee. The NDP's complementary report will therefore not address the substance of the testimony and information received, but will focus on the process for conducting the study.

Overview of the KPMG case

Since 2012, the Canada Revenue Agency (CRA) has been investigating KPMG clients who allegedly made use of tax avoidance mechanisms. Using an elaborate strategy, the consulting firm set up shell companies on the Isle of Man. Fifteen plans were created, involving 25 Canadians who made non-taxable "gifts" to these offshore companies.

According to documents filed with the Tax Court of Canada, the CRA maintains that the funds were transferred in order to deceive the agency, and the tax structure set up by KPMG was a "sham." KPMG is doing everything possible to delay court proceedings.

In March 2016, the CRA was hit by a new revelation in the KPMG case: the agency allegedly offered amnesties to wealthy client who hid millions on the Isle of Man. CBC and the television show *Enquête* obtained a copy of the nine-page confidential offer dated 1 May 2015, and signed by Stéphanie Henderson, a CRA manager responsible for offshore compliance.

This new scandal has made headlines and seriously shaken Canadians' confidence.

The role of the NDP

Following the new revelations that the CRA offered amnesty to KPMG's tax-evading clients, the NDP questioned the Minister of Revenue in the House of Commons Chamber. Her answer caused some confusion: she said that no amnesty had been granted.

The NDP recognized that there was an urgent need to study the issue.

On 14 April 2016, the NDP proposed and received Committee approval of a first motion to invite the Minister of National Revenue, CRA officials, including Stéphanie Henderson, and KPMG representatives appear.

Following the three hearings related to this motion, the NDP tabled a new motion to call additional witnesses. Two additional meetings were subsequently held.

The NDP succeeded in having a total of four motions passed to study KPMG's tax mechanism on the Isle of Man. Five meetings were held, and the Committee heard from nine groups of witnesses including KMPG, the Canada Revenue Agency, Canadians for Tax Fairness, Réseau pour la Justice fiscal Québec, Chartered Professional Accountants of Canada, and persons appearing as individuals.

Unfortunately, the NDP's efforts were considerably weakened.

Liberal members of the Committee tried to weaken the NDP's motions at every opportunity, for example:

- The NDP's original motion to convene the Minister of Revenue and several CRA officials was initially rejected. It was then significantly weakened by removing the reference to the Minister. The motion was finally passed as a Liberal motion, following heated discussions.
- In the case of the NDP motion requesting the Committee to compel KPMG to provide all correspondence between it and the CRA, the government members decided to soften the language and use "request" rather than "compel."
- On 19 May, the NDP proposed a new motion to hear from employees and former employees of KPMG and the CRA as well as independent experts. The motion was referred to the subcommittee and, in the end, only independent experts were invited.

Moreover, certain individuals demonstrated a clear lack of cooperation and goodwill in their testimony. It was almost impossible to receive full answers from KPMG officials (who hid behind attorney-client privilege) or the CRA (who cited privacy concerns).

An exchange between NDP MP Pierre-Luc Dusseault and Stéphanie Henderson, a CRA manager responsible for offshore compliance, went in circles.

Mr. Dusseault:

Madam Henderson, can you confirm that you signed that letter that is posted on the CBC website?

Ms Henderson:

Although the signature appears to be my signature, I can't confirm the source of the information on the website, so I cannot confirm the origin of the document and whether it would be mine or not.

Mr. Dusseault:

Can you confirm that you signed that letter?

Ms. Henderson:

No, I cannot, because I do not know the source of the document.

Mr. Dusseault:

Why would your signature be on that letter if you didn't sign it?

This questioning was followed by a bizarre exchange between NDP Finance Critic Guy Caron and National Revenue Minister Diane Lebouthillier.

Mr. Caron:

Ms. Lebouthillier, I would like to come back to the letter by Ms. Henderson. I asked you a question on the subject, but did not get an answer. Could you provide a yes or no answer? Is the letter before us genuine, or not?

Ms. Lebouthillier:

I am unable to confirm the authenticity of the document posted online by the CBC.

Mr. Caron:

Did you make efforts to find out, and did you conduct an investigation into the letter to ascertain whether it's genuine?

Ms. Lebouthillier:

I'm unable to confirm the authenticity of the document.

Mr. Caron:

We have a letter that supposedly does not exist, but we know 16 letters of agreement were signed with 25 clients. The CBC/Radio-Canada investigation confirms it. Can you confirm that this is indeed the case?

Ms. Lebouthillier:

I cannot confirm the authenticity of the document to you.

M. Caron:

Can you confirm that 16 agreements were signed?

Ms. Lebouthillier:

Mr. Gallivan, could you please answer the question?

Mr. Gallivan:

I believe the number is 15. Initially, 21 cases were before the courts, and there are now six.

We have a letter that no one will say is genuine, yet they acknowledge that 15 people signed it.

In addition, acting through the legal firm Osler, Hoskin & Harcourt LLP, KPMG has managed to impede the study and restrict its scope by issuing two letters to the Committee expressing its concerns about compliance with the *sub judice* convention. According to these letters, any discussions referring specifically to KPMG should be avoided since they could prejudice matters before the courts.

The *sub judice* issue was discussed in camera. When the meeting resumed, counsel from the House of Commons was called in to assist the Committee Chair. Witnesses and committee members were required to limit their comments, which caused obvious unease. After being warned by the Committee Chair, André Lareau said that he was asked to appear to speak about KPMG but he would try to limit himself to more general comments.

In addition, Michael C. Hamersley, who had originally agreed to appear as a witness, declined the invitation, which was a significant loss for the study. He explained his reason for doing so in a letter:

> In light of the actions taken by the Committee on June 7, 2016, including the substantial constraints placed on the scope of member statements and witness testimony in deference to the *sub judice* convention, I must now respectfully decline the Committee's invitation to appear and request that the Committee remove my name from the list of expert witnesses who are participating in the Committee's study.

It is fair to say that this committee study has raised more questions than it has answered. The recommendations in the report are weak and will not shed light on the serious problem of tax avoidance and tax evasion. Worse still, the study has not helped to explain and find solutions to the systemic problems that are rampant at the CRA.

Things could have been different. The House of Commons and its committees have considerable powers, and the House of Commons has the role of "Grand Inquest of the Nation." These powers surpass even attorney-client privilege. They should be exercised with great care, but they belong to Canadians' elected representatives and they must be used when necessary.

Creating a special committee

Given the lack of response, sometimes contradictory statements, vague answers and unsatisfactory recommendations, we believe this study to be incomplete, as was the latest one in 2013. Tax evasion and aggressive tax avoidance cannot be examined part-time or lost among the Finance Committee's numerous other studies. Studies based on five hearings go nowhere. The NDP recommends that Parliament make a full and clear commitment by establishing a special committee and giving it all the necessary resources (including a team of legal and tax advisors). The committee would focus exclusively on this issue for two or even three years and present a report and recommendations that the government could no longer ignore. Recommendation 14 by the NDP is as follows:

> That the government establish an all-party special parliamentary committee on tax evasion, tax havens and aggressive tax avoidance to: (a) assess the scope of the problem, including related issues such as transfer pricing, tax treaties, tax information exchange agreements; (b) study possible government action on the global stage; (c) report its findings and recommendations to the House of Commons by December 1st, 2018.

As long as politicians continue to be so fearful and reluctant to use their powers, there will be no effective means to combat the serious problems of tax evasion and aggressive tax planning. The NDP wants the government to promptly establish an all-party special parliamentary committee on tax evasion, tax havens and aggressive tax avoidance.

Recommendation 1

That the federal government quantitatively and qualitatively reassess its tax information exchange agreements, particularly with regard to the lifting of banking secrecy.

Recommendation 2

That the Auditor General launch a study on Canada Revenue Agency operations, including: (a) the efficiency of the voluntary disclosure program; (b) the consistency of the protocol that sets penalties; (c) the efficiency of tax treaties and tax information exchange agreements; (d) the relationship between the Agency's auditors and accounting firms.

Recommendation 3

That the Canada Revenue Agency expand its efforts to prosecute tax experts that create aggressive tax planning schemes and commit to tougher penalties.

Recommendation 4

That the Information Commissioner and Privacy Commissioner launch a study on Canada Revenue Agency operations, including the level of transparency required to ensure the accountability of the Canada Revenue Agency, with regard to privacy protection.

Recommendation 5

That the federal government amend the voluntary disclosure program to account for penalties that no longer exist, drawing on the American programs: *Offshore Voluntary Disclosure Initiative* (OVDI) and *Streamlined Filing Compliance Procedures* (SFCP).

Recommendation 6

That the federal government examine and measure, as accurately as possible, Canadian tax loss resulting from the use of tax havens and international tax evasion, to determine the federal tax gap.

Recommendation 7

That the federal government enact legislation requiring tax experts and accounting firms to register all fiscal products with the Canada Revenue Agency, as is the case with the Internal Revenue Service in the United States.

Recommendation 8

That the federal government take steps to improve coordination between the Canada Revenue Agency, which investigates possible tax evasion, and the Department of Justice, responsible for prosecutions.

Recommendation 9

That the government ensure that the Canada Revenue Agency stop the systematic negotiation of reduced penalties for tax evaders under the pretext of reducing costs to the justice system, depriving Canada of jurisprudence and creating a regime in which law enforcement becomes the subject of bargaining.

Recommendation 10

That the government launch an independent study on Canada Revenue Agency investigations into cases of tax avoidance or evasion, to determine the number of investigations that result in convictions or settlements, as well as the penalties and interest rates imposed.

Recommendation 11

That the federal government re-examine paragraph 5907(11) of the Income Tax Regulations that allows Canadian companies to transfer assets into tax havens before repatriating them without paying taxes, in cases where the country in question negotiated a TIEA with Canada.

Recommendation 12

That the Office of the Conflict of Interest and Ethics Commissioner launch an investigation into unusual hospitality practices by members of the Canada Revenue Agency's senior management.

Recommendation 13

That the federal government clarify professional secrecy status in accounting firms, because tax avoidance mechanisms developed and proposed by accountants (without official professional secrecy) often seem to fall under the status as soon as they are reviewed by a lawyer from their own firm.

Recommendation 14

That the government establish an all-party special parliamentary committee on tax evasion, tax havens and aggressive tax avoidance to: (a) assess the scope of the problem, including related issues such as transfer pricing, tax treaties, tax information exchange agreements; (b) study possible government action on the global stage; (c) report its findings and recommendations to the House of Commons by December 1st, 2018.