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Chair

Mr. Brian Pallister

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•(1105)

[English]

The Chair (Mr. Brian Pallister (Portage—Lisgar, CPC)): Good morning, committee members.

Good morning, guests.

Pursuant to Standing Order 108(2),

[Translation]

The committee is holding an information session on tax evasion and tax havens.

[English]

This morning we have witnesses from Canada Revenue Agency with us. Gentlemen, we appreciate your being here.

We have a wish to make a point of order from Ms. Wasylycia-Leis, which I'll get to in a moment, but first I'll finish welcoming the guests. We've designated time today from 11 until 1 o'clock. We'll see how that goes with committee members, and see whether that amount of time is required or not.

Also, I should mention that Finance officials notified us that they are not available until next week, so we will pursue that, but we do have a full panel for Thursday, so we look forward to that at that time.

Madam Wasylycia-Leis.

Ms. Judy Wasylycia-Leis (Winnipeg North, NDP): Yes, Mr. Chairman, I have a notice of motion to be dealt with today. Could we start with that?

The Chair: No, we won't. We'll have the witnesses first. But I will endeavour, depending on the response from committee members as to questions, to make sure we do have it at the end of the day, and we'll deal with it at that time, if that's all right.

Ms. Judy Wasylycia-Leis: Could I have a specified time as opposed to having it tagged on at 1 o'clock?

The Chair: I'm pretty confident we'll be able to fit it in, unless we spend too much time debating when, in which case we may not.

Ms. Judy Wasylycia-Leis: Well, I would like sufficient time to present the issue, and I would like to request the procedure from you, Mr. Chairperson, for the future. I'm told, with respect to motions, that when we request that they be put on the agenda, they shall be dealt with.

I have tried persistently to see if there's a way to get this done in a fair way that is not intrusive to the committee work—

The Chair: No, that's good, and I—

Ms. Judy Wasylycia-Leis: —and I don't seem to have any luck at being able to find a reasonable time.

The Chair: That's enough. Yes, thank you very much.

I've always dealt with motions when they've been raised in the course of the meetings where members have asked them to be raised and will continue to do so. I will not make an exception in your case. We'll deal with your motion today.

Ms. Judy Wasylycia-Leis: All right.

The Chair: What I'm pointing out to you, though, is that we have witnesses here available, so let's deal with it at the end of the meeting. We'll make sure there's time available, and if necessary, if it absolutely has to happen, we may even extend the meeting past 1 o'clock, depending on the will of the committee. I will deal with your motion today. I will not deal with it now.

We'll move to the witnesses now.

I understand there's an opening presentation. Will Mr. McCauley make that or will Mr. Kowalski?

Mr. Kowalski, thank you. Please proceed.

Mr. John Kowalski (Acting Assistant Commissioner, Compliance Program Branch, Canada Revenue Agency): Thank you, Mr. Chairman.

This morning I'm joined by a number of other officials from the Canada Revenue Agency, including Brian McCauley, assistant commissioner, legislative policy and regulatory affairs branch; Wayne Adams, chief technical officer for the Canada Revenue Agency and director general, income tax rulings directorate; as well as Fred O'Riordan, director general, international large business directorate, compliance program branch.

I would also note, given that we received the invitation to appear from the committee mid-morning yesterday, that we have a number of additional officials in the room who, depending on the question, and with the concurrence of the chair, could be asked to respond as subject matter experts.

Mr. Chairman, we are pleased to be here this morning.

[Translation]

The CRA is very active in taking action to identify, deter and challenge non-compliance with tax laws. We believe it is important to communicate more about what we do and why—to let taxpayers know about the risks and consequences of non-compliance, and to make sure that compliant taxpayers are fully aware that we do take action against those who do not comply.

[English]

On the subject of tax havens, I would like to share CRA's views, which are based on our role as tax administrators. Canada is part of a global trade and financial system. We know that countries compete to attract investors and trade partners, and we know that this competition extends to tax systems. Countries offer tax concessions and favourable tax rates to all or some industries and/or investors. Some of these competing countries are commonly referred to as tax havens.

Every country has the right to structure its tax system to meet its needs, and these are issues of tax policy for each country, not for tax administrations. Residents of Canada must report and pay tax on worldwide income. The CRA has no view on where Canadian businesses or individuals invest, so long as they report their income and pay taxes as required under Canada's tax laws. The CRA's concern lies not with the use of tax havens, but with the abuse of use of tax havens, for example, when taxpayers use bank secrecy laws or the absence of effective exchange of information provisions with other countries to conceal assets and income that should be taxed.

[Translation]

We are concerned where abusive schemes and transactions are being used to reduce, avoid or evade Canadian tax. We're also concerned where these actions might influence others to do the same, or leave others with the perception that some are not paying their share of taxes.

We know that tax havens can attract tax avoidance promoters who actively provide opportunities to businesses and individuals so they can avoid their tax obligations. We are aware that unsophisticated investors can be lured into tax haven schemes and arrangements, where they ultimately lose their capital investment: this is not only damaging to the investors but also erodes the tax base.

[English]

We are also aware that advances in technology have increased the risks for both investors and tax administrations. For example, Internet access provides increased awareness of tax havens and allows promoters to actively attract individuals and businesses to avoid their tax obligations. Internet access also extends the prospect of abusive use of tax havens to middle-income Canadians. And electronic fund transfers facilitate the ease and privacy of transactions and make identifying transactions more difficult.

The issue of reducing, avoiding, or evading taxes through the abusive use of tax havens does not exist as a risk in isolation. It is an element of aggressive tax planning, which is one of the CRA's four key priority risk areas.

In general, the Canada Revenue Agency's strategy with respect to tax havens is to focus on schemes wherein people and businesses use

a tax haven's bank secrecy laws and/or ineffective exchange of information provisions to hide assets and income upon which Canadian taxes should have been paid. Specifically, we have extensive audit programs, foreign reporting requirements, a number of specific anti-avoidance provisions in the Income Tax Act, and a broad network of 86 treaties.

We also have the general anti-avoidance rule, which is designed to prevent access to tax benefits that were not intended by Parliament.

●(1110)

[Translation]

Examples of these measures include our regular audits of small and medium businesses and large corporations, where the use of tax havens is an indicator of risk, and our more specialized audit programs that focus on international tax and tax avoidance issues.

As part of our strategy to combat aggressive tax planning, the CRA established 11 centres of expertise across the country in August 2005, creating teams of experts from the specialized audit areas of international tax and tax avoidance to, among other things, combat aggressive tax planning and the inappropriate use of tax havens and tax shelters, both at home and abroad.

[English]

We know that the abusive use of tax havens is an international issue, and we are working with other tax administrations and organizations to address it. For example, the CRA works with the Organisation for Economic Co-operation and Development, including its seven-country tax haven working group, and the Joint International Tax Shelter Information Centre, or JITSIC. Indeed, the Canada Revenue Agency leads the seven-country tax haven working group. The group exchanges information and approaches to dealing with compliance challenges associated with the abusive use of tax havens. It comprises Australia, Canada, France, Germany, Japan, the United Kingdom, and the United States.

The second organization is the Joint International Tax Shelter Information Centre. It was established in April 2004, when the revenue commissioners from Australia, Canada, the United Kingdom, and the United States signed a memorandum of understanding to increase collaboration and coordinate information about abusive tax transactions. The centre became operational in September 2004 in Washington, D.C. The CRA has had a delegate there since that time, staffed on a rotational assignment basis.

JITSIC's objectives include enhancing compliance through real-time exchanges of information, improving knowledge of how promoters operate, identifying emerging trends and patterns, and sharing best practices for identifying and addressing schemes.

Mr. Chairman, the CRA recognizes the challenges associated with the abusive use of tax havens and tax avoidance. This has been a long-term challenge, and we must continue to take the long-term view in addressing it, as initiatives, such as working with other countries and tax organizations, take time to bear results. We have been aggressively pursuing such abuses, and we intend to continue doing so.

We have some indicators that our actions are having an effect. For example, during 2005-06, the CRA assessed additional taxes of \$174 million directly related to aggressive international tax planning, including the abusive use of tax havens. And in the first six months of 2006-07, the CRA assessed additional taxes of \$215 million.

Mr. Chairman, that concludes our opening remarks.

Thank you.

The Chair: *Merci beaucoup*, Mr. Kowalski.

We'll continue, and begin with questions.

Mr. McKay, seven minutes.

Hon. John McKay (Scarborough—Guildwood, Lib.): Thank you, Chair.

Thank you, folks.

This inquiry is precipitated in part by the fact that the minister put in an interest deductibility clause in the budget, which seemed to be fairly broad brush. He was going to abolish all interest deductibility within a period of two years. He then amended his position to say we may have a longer period of grandfathering, and so he increased two years to ten years.

Now he appears to be going to issue a clarification, and he's going to drop the whole business of interest deductibility as a broad issue and he's going to be going after so-called double-dipping. Other than what the minister might know about a visit to Dairy Queen, I wonder if you could explain to the committee what the specific issue is around double-dipping, so-called.

Mr. Brian McCauley (Assistant Commissioner, Legislative Policy and Regulatory Affairs Branch, Canada Revenue Agency): We actually have prepared a little graphic on double-dipping that we could circulate and speak to. It is a fairly complex notion, and there's no better person in the country than Wayne, from a practitioner's point of view, to walk through that. So with the indulgence—

• (1115)

Hon. John McKay: Is that in order, Chair?

Mr. Brian McCauley: I was going to ask the chair—we had spoken to the clerk—if we could provide this.

Hon. John McKay: As long as it's not coming off my time, Chair.

The Chair: I don't have any problem with that. Is this information in both official languages?

Mr. Brian McCauley: Yes.

Hon. John McKay: Thanks very much.

Mr. Brian McCauley: We'll wait until the document comes around, because we were speaking of this, actually, last night around 9:30 when we were going through some of the papers for today. We thought it would be helpful.

Hon. John McKay: Are there any other documents you want to circulate at this point?

Mr. Brian McCauley: That's it.

I would also observe that this is no comment or observation on the Minister of Finance's proposals. It's our depiction of what we have seen in terms of what we would characterize as double-dipping from an administrator's point of view.

The Chair: Feel free to proceed. Members will get the document very quickly now.

Mr. Wayne Adams (Director General, Income Tax Rulings Directorate, Policy and Planning Branch, Canada Revenue Agency): Good morning.

Thank you, Chair.

The nickname “double-dip” is jargon for a financing structure that attempts to take advantage of the fact that one has a choice when raising capital. They can either raise capital by way of debt, where they have to pay interest, or raise it in equity by issuing shares, and there's no interest charge there but there's an expectation of the person who advanced the money to receive dividends.

In a closely related group, it provides some tax planning opportunities where one is in a position to have interest expense reflected in countries that have higher rates of tax and the interest income in countries with lower rates of tax.

In the example that we have for starters, with the alternate structure, if within a group you had one foreign company, say, named Tax Haven—and Tax Haven Company is just an expression there, it could be a company in Ireland, the Netherlands, or any other country that might have lower rates of tax—wanted to finance a factory, let's say in the United States, it could have made a \$200 million loan at 10% interest. The United States company would have interest expense of \$20 million, and the Tax Haven Company would have interest income of \$20 million.

The double-dip is that within that same corporate entity, on the chart headed up “Double-dip Structure”, the same originating point of \$20 million lends the money into Canada, and that would create an interest expense in Canada of \$20 million; and if the year before it had had \$20 million of taxable income, it would now have no taxable income.

Hon. John McKay: Just as a point of clarification, you've got the Tax Haven Company and then Tax Haven Company. Are they separate as corporations within the same corporate structure?

Mr. Wayne Adams: They're in the same corporate structure. They can be in different countries, and they can be different entities. I just put these together in a hurry, but thank you for clarifying that.

Hon. John McKay: So we could call it Tax Haven Company A and Tax Haven Company B, and A or B could be in the same country or different countries.

Mr. Wayne Adams: Often are in different ones, but they could be in the same country, yes.

Hon. John McKay: So we could go from Barbados to Ireland, or whatever, if you wanted to do it that way.

Mr. Wayne Adams: Yes.

Hon. John McKay: Okay.

Mr. Wayne Adams: So the Canadian company now has \$200 million of cash, and it makes a share investment into its own subsidiary in a tax haven country, and that gives capital, then, to the Tax Haven Company with no expense obligation, but dividend obligation. It can lend, then, into the United States or western Europe.

In red, you'll see there are two interest expense items of \$20 million. That's offset by two interest income items, but they're reported in these tax haven jurisdictions. In this case, company B would have \$20 million of interest income flowing in from the U.S., and company A would have \$20 million of interest income flowing in from Canada.

Essentially, on funds originating in Tax Haven Company A and ending up in a United States' company, you have the creation of a second interest expense offset by interest income. And that's how the nickname "double-dip" came about.

• (1120)

Hon. John McKay: So revenue is in the haven A company and expense is in the Canadian company.

Mr. Wayne Adams: Yes.

Hon. John McKay: Okay. Can you tell me whether this kind of structure is used by other nations and other nations' companies?

Mr. Wayne Adams: I checked this morning before I came over, and there are papers that refer to double-dipping in the United Kingdom, France, the United States, so almost every higher-tax jurisdiction struggles with these conduit-type opportunities.

Hon. John McKay: Is it fair to say that most OECD countries have this kind of structure for most of their corporate nationals?

Mr. Wayne Adams: Well, they're vulnerable to having that occur, because of the interest rules that say you can have a deduction for borrowed money if you make qualifying investments, and capitalizing subsidiaries or other foreign entities is—

Hon. John McKay: Now, Mr. Kowalski said during his testimony that they'd recovered \$174 million of additional tax revenue. Presumably if you were looking at a corporate structure such as this, you could still say, well, that's not right, and apply the avoidance rules. Would avoidance rules apply to—what is it called?—the general—

Mr. Wayne Adams: General anti-avoidance rule.

Hon. John McKay: Yes.

Mr. Wayne Adams: We did attempt to address these types of structures and announced our position in the nineties, that we had concerns with this structure. And we did use the general anti-avoidance rule. Shortly after, the Supreme Court ruled on the Canada

Trustco and Kaulius cases in 2005. The first case using the structure was heard by the tax court. It was a company called Univar. It was issued on November 3, 2005 and the Crown was unsuccessful in challenging this structure. But there are two other cases that are proceeding to the tax court, where we're hopeful that our arguments may prevail.

[Translation]

The Chair: Mr. Crête, you have seven minutes.

Mr. Paul Crête (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, BQ): Thank you, Mr. Chair

According to the Office of the Auditor General, in 1990, Canadian businesses repatriated \$1.2 billion from tax havens, chiefly from Barbados. Since that time, according to a study by Statistics Canada, there has been an 18% annual increase in Canada of investments in tax havens.

On the assumption that investment growth is more or less the same as profit growth, we estimate that recovered profits in 2007 amounted to some \$3.8 billion.

Does this amount correspond to your estimates? If not, how much do you estimate recovered profits from tax havens to be for a current year such as this one or last year?

[English]

Mr. Fred O'Riordan (Director General, Compliance Program Branch, Canada Revenue Agency): If I understood the question correctly, I believe you're referring to amounts of money that were referenced in the Auditor General's report of this February on international taxation.

[Translation]

Mr. Paul Crête: In 1990, the Auditor General estimated that \$1.2 billion was recovered from tax havens, mainly from Barbados. If we extrapolate from this, we estimate that today recovered profits would account for about \$3.8 billion.

Can you confirm that this amount is correct? If not, do think it is another amount? How much is it?

[English]

Mr. John Kowalski: I will try to respond to that question.

We don't have estimates of tax gap per se or the amount of revenue that perhaps has not been declared by individuals. There's an argument to say there is no set methodology at this point to estimate the amount of taxes in terms of a tax gap. In 1999 the Auditor General did a study of the economy and looked at different academic research and studies over a 17-year period. They found the estimates ranged anywhere from 3% to 20% of GDP because of all the differences in assumptions and methodologies and so on.

We are aware that investment offshore has increased significantly over the years, but we would note that increased offshore investment does not mean increased tax avoidance in the same amount. As I mentioned earlier, Canada is part of a global economy, and corporations have diversified investment strategies, both domestically and internationally. We don't have a view as to where they invest—those are issues of tax policy—as long as they comply with our tax laws and report their income.

• (1125)

[Translation]

Mr. Paul Crête: You say that you do not have an estimate of the amount. For instance, we know that the Tax Treaty between Canada and Barbados contains a measure whereby businesses that benefit from favourable tax treatment must be taxed when they recover their profits. But regulation 5907 overrides this provision in the Tax Treaty between Canada and Barbados.

Actually this is done on purpose so that people do not have to pay anything. Are you telling me that the Canadian government's Revenue Agency cannot give me an estimate of the profits recovered from Barbados and other countries without any tax being paid? You do not have an estimate of that? That means that, when you do your annual budget estimates, it does not occur to you that it might be an opportunity to get rid of the Tax Treaty between Canada and Barbados, say.

[English]

Mr. Brian McCauley: No, traditionally as an agency we don't give revenue estimates, particularly on items like that. That's the responsibility of the Department of Finance. The Auditor General is obviously comfortable with how she came up with that number, and maybe it would be a good idea to chat with her.

We don't disagree with the number, but we don't confirm it either. We're not in the job of making estimates in that manner.

[Translation]

Mr. Paul Crête: Do you have an estimate of the tax avoidance that occurs under regulation 5907? Some companies must use this provision, and you must know how extensive it is and what the amounts are.

Mr. Brian McCauley: We know this is a problem and it worries us. But we do not calculate the figures like an objective or as an estimate.

Mr. Paul Crête: So you do not deny the amount of \$1.2 billion mentioned in 1990 by the Office of the Auditor General or the estimated annual increase of 18% by Statistics Canada. You do not deny that these figures may be realistic.

[English]

Mr. Brian McCauley: We would say neither yes or no. We accept them as being a reasonable effort on their part to come up with the calculation, just as Finance and a number of independent papers do. There are enough people making those estimates. We know it's an issue and we attack it from an administrative perspective, but we don't make a practice of trying to estimate, as John said, tax gaps or numbers like that. We don't challenge or disagree with what others are putting out.

[Translation]

Mr. Paul Crête: When the government does its budget estimates, it makes budget choices. It must be able to estimate that, if it got rid of the Tax Treaty between Canada and Barbados, it would recoup a certain number of billions of dollars. You do not have that estimate? Such figures have never been requested from the Department of Finance? You do not have an estimate of the amount of tax avoidance that stems from the application of the Tax Treaty between Canada and Barbados?

[English]

Mr. Brian McCauley: No, we typically do it the other way round. For example, we know roughly what the productivity of an audit effort is, or a particular application of a capacity from a tool or an instrument. We say to Finance, with this much effort we typically can generate these certain amounts, but we don't do it by country and we don't overfocus our efforts. That's largely because the challenge keeps evolving, and depending on our risk assessment and risk profiles, those resources will move.

[Translation]

Mr. Paul Crête: Still I am a bit surprised. Who can tell what the impact is of regulation 5907? By taking advantage of this provision, people do not have to pay any taxes. In fact it was drafted so that any profits returning from abroad do not have to be taxed. Can you give us the amount?

[English]

The Chair: Monsieur Crête, you're finished.

Go ahead, Mr. Wallace, for seven minutes.

Mr. Mike Wallace (Burlington, CPC): Thank you, Mr. Chairman.

I want to thank the officials for coming on relatively short notice. It sounds as though we made you work a little overtime yesterday. Now that it's tax season, you'd be working overtime anyway.

I have a couple of general questions.

Some of the earlier questioners have been focusing on the business side. In your presentation, you talk about personal tax avoidance through using tax havens, and companies and businesses using them. What's the balance? in your view, based on what you've been working on, is it mostly on the corporate side, or are there some opportunities that individuals have been taking advantage of?

• (1130)

Mr. Fred O'Riordan: There's more money at stake on the corporate tax side. More of our audit efforts are devoted to corporations than to individuals. I don't have an exact percentage split, but it's predominantly corporate tax.

That's not to say we don't devote a considerable amount of audit effort to the individual tax side as well. We focus on high-wealth individuals, in particular when there's an association with a haven country. We have been doing more on the personal income tax side in the last couple of years, partly because of the exchanges of best practices that we've had with other tax administrations.

I can mention, for example, the Australian tax office. They undertook a high-wealth-individual project several years ago that they briefed us on. We were quite taken with that and initiated what we call a related parties initiative that looks at high-wealth individuals and the entities they control, either directly or indirectly. This is a non-traditional audit approach; it's a merger of what we would normally do on the individual side and the corporate side. It means we have a network of associated entities and we have parallel audit work. It's actually a single audit divided into numerous audits on that basis.

We find we've had very good success with that project. In fact, we'll probably be converting it into a permanent program, based on the results of the pilots we've undertaken. We've done about 12 of these. They take a considerable investment of audit expertise, but there is a return on investment that makes it well worth continuing to do it.

Mr. Mike Wallace: My second question basically relates to that.

We heard from Governor Dodge last week, and the opposition brought forward the issue in the budget that instigated this broader review, which I think is an appropriate way to go. I believe he indicated that this is not a new problem, that it's been around for a number of years, and it's really not that easy to solve, because there are people who are doing things fairly—let's say it that way—and others are taking advantage.

Would you like to comment on the difficulty of this file in terms of trying to close what some people call tax haven loopholes, and so on? I'd like a high-up overview of how difficult this is.

Mr. John Kowalski: Perhaps I could start, and other colleagues could join in.

I would certainly agree with the view that this has been a long-term challenge for a number of years and will likely continue to be a long-term challenge. By definition, the tax havens issue involves other countries around the world, and any sustainable action to address it involves the cooperation of other countries around the world. Working in multinational forums such as the OECD and other venues like that is always challenging in terms of the length of time it takes to work through these kinds of issues and to get agreements on different approaches, exchange of information provisions, and so on.

We would certainly agree that it is a challenging issue that does take a fair amount of sustained effort and commitment to address.

Mr. Wayne Adams: Thank you.

I appreciate your observation there. There are occasions when it is difficult to tell the difference between what is entirely contemplated by tax policy and what might be characterized as taking an unintended advantage.

We have the opportunity to consult on the committee that administers the general anti-avoidance rule. We have lawyers from the Department of Justice, policy experts from the Department of Finance, and our audit and legislation people within Revenue.

For example, one of the issues we struggle with is the Univar court case, to which I referred. I read the decision a couple of times, and I didn't even get a sense from the tax court judge that he saw any

of the mischief that we saw. It was a very traditional, classic double-dip structure. Sometimes we have to be careful and continuously do a validity check on ourselves so that we're focused on the right cases to pursue. We sense we are, but occasionally the observations of the court help us to refocus. It is difficult.

I think we're aware of investment that's intended to take advantage of incentives. Hopefully we can focus on those that aren't, and address them.

● (1135)

Mr. Mike Wallace: If you discover an inadvertent avoidance—let me call it that—within a corporate structure, do you take them to court or give them an opportunity to pay it back? What's the process if you discover this kind of inconsistency?

Mr. Wayne Adams: If we're satisfied that we're correct and convincing in our arguments, it's entirely possible that the company will agree that their strategy was aggressive, and they're a company with a philosophy that's a bit risk-aggressive. It's very expensive to litigate cases, for both sides.

Some will be satisfied if John and Fred's area has convincing arguments to support the assessment. Some may file a notice of objection and still deal with Revenue officials and the appeals process. At that point in time, they might be satisfied with the outcome. Very few go off to court. It's quite surprising how few cases go off to court.

The Chair: We'll continue now with Madam Wasylycia-Leis, for seven minutes.

Ms. Judy Wasylycia-Leis: Thank you, Mr. Chairperson.

Thanks to our witnesses today.

The genesis of the motion that the committee has before it came out of concerns about the budget provision around the elimination of interest deductibility, in terms of investment in foreign corporations.

From the minister's statement yesterday and media reports, it appears that in fact this whole issue is being addressed by the government. Do you have any sense of when that change will come and specifically what it may deal with?

Mr. Brian McCauley: That's a very good question, and it allows us to maybe make a point, which I think John mentioned in the beginning. As the Revenue Agency, we are extremely careful that we do not comment on tax policy or legislative changes. There's always a very clean dividing line between the responsibilities of the Department of Finance and their officials to speak to tax policy and legislative questions.

For us to begin to do so can certainly cloud the messages that the government or the Minister of Finance wants to send, and can have some adverse effects in the markets or with business decisions. We respect our role as an administrator and keep our comments to the administration side.

In fairness, I would note, madam, that we obviously work closely with Finance. The Department of Finance is always well aware of our concerns and our views as administrators—as is the minister, I'm sure—and they take those into consideration before they make any decisions on changes or the timing of changes.

But no, we're not privy to the degree to which Minister Flaherty may or may not be adjusting, or the timing around that. They'll call us when the time is right, and at that point we'll have a chat with them.

Ms. Judy Wasylcia-Leis: In terms of the measure as introduced in the budget, were you consulted with respect to the ability to enforce that particular provision—given the fact that the concern was raised by Mr. Dodge and others—about the difficulty of separating out those who use this as a tax haven versus those who are legitimately expanding and investing?

Did you comment on the difficulties of enforcing this particular budgetary provision?

Mr. Brian McCauley: We had an opportunity to signal to Finance that if they asked us to administer this particular change, we certainly could do so.

I would ask maybe John or Wayne to comment.

I don't think it makes anything any more or less difficult for us at the end of the day. As we've described, it is a very complex and highly technical area, but it's one where we certainly signal that if the Minister of Finance and the government wanted us to administer this particular provision, we would be happy to do so.

I don't know, Wayne or John, that we've identified anything beyond that in terms of administration. We, much like you, are waiting for further clarity as to the intent.

Did you have an observation, Wayne, that you wanted to share with the committee?

• (1140)

Mr. Wayne Adams: A couple of questioners have commented on the abolition or elimination of interest expense. It's my understanding in reading that provision that the Finance measure is simply saying that the deduction is deferred until taxable profits are recovered from these entities in foreign countries. I don't believe it would be fair to characterize it as abolition. It is available, and that is how the minister would sense that he could continue to stimulate the investment he intends to stimulate. It's a deduction that would be available to companies, but only once they're recovering taxable profits.

Ms. Judy Wasylcia-Leis: There are those who believe that in fact the government made the right decision all along, and that there is considerable revenue to be gained from this measure that could then help deal with the growing gap between the overburden upon individual taxpayers for government revenue rather than on corporate interests. We've seen that gap grow considerably.

Could you comment on the amount of revenue we would be saving by staying on course versus what would happen if the minister makes an adjustment to this policy as you've suggested, by putting on hold the deductibility?

Mr. John Kowalski: Perhaps, as noted earlier, that would be a good question for the Department of Finance from a tax policy perspective rather than to us in our role as tax administrators. In terms of the kinds of consultations we get into, we certainly get asked for our advice on the administrative feasibility of a particular provision or the related cost of a particular provision, or perhaps the

administrative burden it might or might not engender for individuals or corporations, and so on. That's normally the kind of feedback we provide. But from the perspective of tax policy and the implications from a tax policy perspective, it's clearly the domain of the Department of Finance.

Ms. Judy Wasylcia-Leis: On the issue of tax havens, we've had evidence in the past that companies are being investigated for using offshore countries for tax haven purposes, as the court case involving Merck Frosst shows. In the past, officials have said they can't comment on the specifics of a case. Can you tell us how many companies are being investigated besides Merck Frosst for evasion of taxes by using tax havens?

Mr. John Kowalski: As pointed out, we couldn't discuss the affairs of any particular company or corporation. In terms of the action we take, it might be more accurate to refer to it as an audit than as an investigation. In the Canada Revenue Agency, when we use the term "investigation" it normally means a criminal investigation—and charter rights come into play—and that we're planning to make a recommendation to the Department of Justice to prosecute somebody in court. That is our use of the term "investigation".

Audits are ongoing. At any point in time, there are hundreds of audits in play. I recall one number, if I remember correctly, in response to a question that I think was from a member of the committee. There were 305 audits going on at a particular point—I think at the end of November 2006—that involved international transactions of one type or another. These were not necessarily using tax havens but were international transactions of one type or another. That at least provides an indication of the level of effort.

The Chair: Thank you.

Now we'll go to Mr. McCallum, five minutes.

• (1145)

Hon. John McCallum (Markham—Unionville, Lib.): Thank you, Mr. Chair.

This discussion is bringing back happy memories of opening centres of expertise in...what month in 2005?

Mr. Brian McCauley: The fall, I guess.

Hon. John McCallum: The purpose was to intensify our efforts to go after aggressive tax planning. Now, as I recall, before opening those centres of expertise we were still pursuing these matters, but these centres allowed us to do it with greater resources and more effectively, isn't that right? Basically, CRA had been going after this kind of behaviour for many years, it's fair to say, but the centres of expertise allowed us to do it more expeditiously.

I remember visiting one of these places, having quite a long conversation with the people working there, and being very impressed with their commitment and knowledge. But I also remember that they were quite frustrated by certain court decisions that seemed to stymie their efforts to deal with these abusive double-dip structures and other things of that nature.

Have those efforts encountered further blockages by the courts—I haven't followed this as much since I left—or are there pending decisions that haven't yet been made?

Mr. Brian McCauley: Maybe Wayne can answer that.

I can offer one short update to the member. One provision in the current budget is to provide an additional \$20 million on an annual basis to reinvest in and to reinvigorate the centres of expertise. That certainly is a capacity boost that we're very much looking forward to.

Hon. John McCallum: That's good.

Mr. Wayne Adams: On the question of court decisions, any time we're unsuccessful we're disappointed throughout the whole organization.

The Supreme Court ruled on two cases in 2005. On Canada Trustco we were unsuccessful, and on a case involving individuals we were successful. Since then, on avoidance cases, I think there have been 12, and we're at about six-six.

It's still a learning process. I wouldn't fault the courts with this. These are very complex transactions, and a lot of them are very specific to their cases. I don't envy their job of trying to work through it. But we're batting about .500.

Hon. John McCallum: Okay, well, would you agree that when we established those centres of expertise, that was a significant increase in the intensity with which we went after these arrangements?

Mr. Brian McCauley: Yes. I think \$30 million a year, if I remember correctly, was the capacity added.

Hon. John McCallum: And how much was in the previous budget, did you say?

Mr. Fred O'Riordan: The previous budget was the \$30 million that Brian mentioned. The 2005 budget was \$30 million, with additional money, \$50 million, in the 2007 budget, of which about \$20 million is allocated to these sorts of exercises. It's not toe-tagged to centres of expertise per se, but rather the nature of the non-compliance problem we have.

Hon. John McCallum: So about \$30 million committed under the Liberals and an additional \$20 under the Conservatives; is that what you're saying?

Mr. Fred O'Riordan: Well, I think what I said was 2005 and 2007 budgets, but....

Voices: Oh, oh!

Hon. John McCallum: I guess the point I'm making is that both governments, by your testimony, decided to invest resources to go after these abusive behaviours in tax havens and in other ways to really try to deal with these in a serious manner.

Mr. Fred O'Riordan: Absolutely.

Just to expand a little bit on the centres, we have 11 of them across the country. They really supplement the traditional methods that we'd been using to investigate these types of non-compliance. They're doing a mixture of doing research on a project basis and initiating audits. Obviously we can't devote all of the \$30 million to that area, but a significant portion of the money went to the centres of expertise.

Since then we have initiated additional research projects as well.

Hon. John McCallum: I certainly remember pursuing these abuses with great enthusiasm and gusto.

Thank you.

The Chair: Thank you, Mr. McCallum.

My concerns centre not so much on you going after the abuses, but that the current rules, by some definitions, may be interpreted as abusive in and of themselves. I'd like to address that issue.

The fact that money is shifted offshore doesn't concern me. The fact that it's shifted offshore to reduce Canada's tax obligation, or the obligation to Canada, does. The fact that it is then shifted to a jurisdiction where basically little or no tax obligation is incurred is a reality around the world. I know money will flow to those types of jurisdictions, so we shouldn't kid ourselves or buy the argument that what we're talking about in whole is going to reduce Canada's ability to expand its business efforts in the Barbados, which has a population of half of Ottawa. That's not why. Between 1990 and 2005, about a 4,000% increase in money going from Canada to Barbados occurred. It didn't go there so we could invest in Barbados, it went there so that these companies could pay little or no tax. That's why it went there.

My understanding from your presentation is that this money then can go from that jurisdiction to an affiliate company in another jurisdiction where they can also deduct interest expense for that money again. So Canadian-based corporations that have affiliate companies in the U.S. could actually reduce the tax obligation in Canada, move the money to a tax haven country or a low-tax jurisdiction, whatever semantics we like to use, and lend it again to a U.S. affiliate, where they would also be able to lower their tax obligation there. Is that correct?

• (1150)

Mr. Wayne Adams: In the worst scenario, yes, that's correct.

The Chair: And that's not an abuse of the rules, those are the rules.

Mr. Wayne Adams: I don't know that it would be fair to say it's not an abuse. One of the opportunities with people who are aware of treaties, financial instruments, and all these other aspects is that they are able to create relationships and entities where you could use a term like "exploit" or "take advantage of", but in isolation, each one of those transactions works within the law. It's only when you step back and look at it...and with the investment lately, we've had the capacity to look at a global investment scheme, whereas 20 years ago we'd have just been looking at the borrowing and the investment.

The Chair: Suffice it to say that certainly in the last 10 years we've seen I don't know how many Auditors General reports on this issue saying it's a problem. I believe it has been a problem for 50 years, in some form. It's increasing exponentially, and I can't believe the relative calm with which it's met. With the degree to which the increase in offshore investment is occurring and we're apologizing for going after the subject, I find that kind of incredible.

Here we have an argument being made in this country that we shouldn't even talk about this issue because it will reduce Canada's competitiveness. You know, there are a lot of farmers, teachers, and auto workers in this country who don't have these types of mechanisms available to them. They could be a hell of a lot more competitive if they didn't have to pay their taxes either.

What concerns me about your presentation is this: what's missing from this chart is the repatriation issue, that not only is the situation as you've described it, and as I've repeated it, that you get to deduct and reduce tax initially and you can do it again in another jurisdiction, but you can cleanse it or launder it through a third jurisdiction—Bermuda, Cypress, or wherever—pretend that you paid tax on it when you didn't, and bring it back to Canada again tax-free.

Is that true?

Mr. Wayne Adams: If you repatriate profits from foreign affiliates by way of dividends, and if those dividends come out of what's referred to as exempt surplus, which is a concept that presumes taxation, then you're correct, it does return to Canada tax-free.

They don't even have to do that. They can just reinvest globally out of Barbados, if that's the country, to build more global wealth.

The Chair: So CanCo pays little or no tax, dumps the money into Barbados, fools around with it and makes money on it, but pays 1% tax, and then is eligible to bring it back without paying tax on it. So you can understand the concern that a taxpayer who understands even the embryonic aspects of this would have about paying their taxes when they see somebody else not paying theirs.

Revenue Canada presides over a system based on volunteerism, essentially. Isn't that right? You have to have compliance based on people honourably filling out a form saying what they make. Isn't that the gist of our tax system?

• (1155)

Mr. Wayne Adams: And most do, I would say.

The Chair: Aren't you at all concerned that just as many won't when they come to understand what their friends in Corpco Canada can do to avoid paying their obligations? The percentage of revenue that's derived from corporations in this country has been decreasing relatively steadily over the last number of years. I would think that if governments don't address this issue in some form, the percentage of revenue that will be derived from individual taxpayers is going to continue to rise steadily as a consequence of the fact that big companies can take advantage of these types of things, and the little guy on the street can't.

What's going on in other jurisdictions? Are other jurisdictions just sitting back and saying that everybody else is doing it—this is an argument I've heard from some here—so we should do nothing about it, too?

First, what are other jurisdictions doing to limit the degree to which interest can be deducted and thereby reduce tax revenue on foreign investment? And second, what are they doing in terms of the repatriation aspects of this as to the tax-free repatriation of the money? Are other jurisdictions doing something in respect of these two issues?

Mr. Brian McCauley: I'll just make a brief comment, Mr. Chair, before turning it over to Wayne.

I think a number of the observations you made relate probably more to tax policy than to tax administration. That being said, in all fairness, the agency does take this issue very seriously. The government has made significant investments over time. It's certainly, as John said, one of our top four priorities that we focus on.

I would note that in the last Auditor General's report, which perhaps doesn't happen all that frequently, we really got good marks in terms of the efforts we were making within our responsibility as an administrator. So we are doing our best, but it is a difficult and, I would note too, long-term challenge.

It was interesting. We were looking at the issue of exchange of information agreements, and someone noted that the U.S. has 20 information exchange agreements, and we're still working on our first. We then pointed out to the individual that the United States started in 1983 and didn't sign the first agreements until, I think, the early 2000s, if I remember.

The Chair: That's nice, and I appreciate the fact that the Auditor General commented on your favourable progress in policing the existing rules, but my question was about changing those rules. My question was about what other jurisdictions are doing about those specific issues we're talking about this morning: interest deductibility and repatriation. That's what I asked, and I'd like an answer to that question.

Mr. Wayne Adams: Chairman, again, I think it would be fair if Finance was given the opportunity to answer that question. We attend many of the same international venue meetings on what's referred to as harmful tax practices or sharing best practices and the like. Every country that has a reasonably high rate of taxation is struggling with these very issues. I don't know that it would be fair to say that we lag behind, or even that we are out front. I think it was thought, in 1988, when the general anti-avoidance rule was issued, that it might influence behaviour in a way, and I think it had that effect.

But I don't contest your observation on the relative rating of corporate tax revenue to individual tax revenue. I would defer to Finance to comment on whether they think there are mechanisms that can address that in a fair and predictable way.

The Chair: Right.

We'll go to Mr. St-Cyr.

[Translation]

Mr. Thierry St-Cyr (Jeanne-Le Ber, BQ): Thank you, Mr. Chair, for your intervention. Those five minutes seemed particularly long to me. I imagine that, in your great magnanimity, you are going to give me enough time to cover the three subjects that I would like to deal with today with the Agency.

I wanted to come back to what my colleague, Paul Crête, was talking about, namely regulation 5907, which allows the recovery of profits, more particularly from Barbados. Under the Tax Treaty between Canada and Barbados, a priori, tax should be paid when profits are recovered, but regulation 5907 overrides this regulation.

I would like you to explain to me quickly—because we do not have much time—what the mechanism is and how it makes the normal treaty inoperative.

• (1200)

[English]

Mr. Wayne Adams: Thank you.

The issue of regulation 5907 was raised last week. Brian asked me to look at it. Regulation 5907 is, I think, 36 pages long. It attempts to give some coherence to this deduction in respect of dividends that are received from foreign affiliates. That's very basic. There's a presumption that in Barbados there is a rate of tax. It is a low rate of tax, but it is a rate of tax nonetheless. As long as we have a treaty with that country and there is a rate of tax applicable to the earnings there, no matter how modest, it is within the scheme of the act to allow those profits to return to Canada without a second incidence of tax.

[Translation]

Mr. Thierry St-Cyr: According to the mechanism, when Canadian businesses complete their tax return and declare income earned abroad, for example, in Barbados, they also claim that, under regulation 5907, they have already paid tax on this income in Barbados. In so doing they ask to be exempted in Canada.

Is that right?

[English]

Mr. Wayne Adams: Yes, sir.

[Translation]

Mr. Thierry St-Cyr: Thus, when my colleague, Mr. Crête, asked you how much money that represented and you told us that you did not have the figures, that meant that, although you had not added up these figures, you had them in the tax returns for all the companies, and that all you need to do is to add them all up in order to provide them to the committee?

[English]

Mr. Wayne Adams: I don't know if there is a fair connection between those two terms. I thought there was a question of whether we could estimate the potential recovery of profits from those entities.

We have the ability to capture the amounts claimed under this deduction provision when the money is returned to Canada. You are not required to file a global tax return in Canada. If the entity in Barbados is a separate corporate entity filing in Barbados, then Canada simply asks for information related to some of the activities of that entity, or when profits are recovered.

And I don't know whether we'd have the capacity, on the deduction under section 113, to further say from what country it originated. So our systems may not be able to produce the information, but we could certainly undertake to—

[Translation]

Mr. Thierry St-Cyr: When businesses recover their profits, they have to declare them. They must first declare them and then request the exemption. So you can at least obtain the total amount for which an exemption has been given?

[English]

Mr. Brian McCauley: We can check. The difficulty may be on the individual side, where sometimes certain fields aren't always necessarily keyed or captured. So it must be reported. But we can certainly undertake to verify what information we have and can make available.

[Translation]

Mr. Thierry St-Cyr: All right, thank you.

I would now like to pose a second question concerning the double-dipping structure that you presented to us. I would like to know whether I understand it properly.

Is there actually anything that would prevent triple-dipping or quadruple-dipping? Is there something that would prevent an American corporation from underwriting capital under another company's name in a tax haven, and so on?

[English]

Mr. Wayne Adams: We have speculated that there may be a possibility. We don't have any companies for which we have been able to document where that behaviour has occurred. But it is possible that there could be more than two.

The Chair: *Merci beaucoup, monsieur.*

Mr. Del Mastro, we continue with you now, for five minutes.

Mr. Dean Del Mastro (Peterborough, CPC): Thank you, Mr. Chair.

I thank the panel members for their contributions here today. They are certainly shedding some light on this issue.

In your notes, you spoke of a number of issues. Certainly tax fairness, I think, is the overriding objective of what we're trying to achieve. Certainly if you look at why we audit in the first place, it's to ensure that everyone who is a taxpayer in Canada can be reasonably certain that everyone, be they corporate or individual, is contributing their fair share of taxes. That's why we audit, because it is an honour system, as the chair pointed out. Ultimately we want to make sure everyone has confidence that nobody is skipping around the rules.

I was concerned about a couple of things. First of all, there are some pretty big numbers as to money that we've actually been able to pick up in additional taxes—\$215 million in this recent quarter. We've also talked about how the Internet is making access to tax havens, or at least promotion of them, easier. We heard about some unsophisticated investors being taken advantage of and potentially losing capital because of the understanding that they can skip out on some taxes.

Are we just scratching the surface on this? What is your feeling on this? How big is this market? Do you have any scope or any idea of what we're really talking about?

• (1205)

Mr. John Kowalski: We do have some indications in terms of the scope. I might step back a little bit, though, in terms of the self-assessment system itself.

It certainly is a self-assessment system in Canada, although we do have a number of checks and balances in that self-assessment system to ensure that there is compliance. You mentioned audits. We have third party reporting. We have various verifications of income tax returns as a process. They go through automated validity checks and so forth. We do investigations. So there's a large number of different instruments that we bring to bear on compliance issues. We provide service. We do taxpayer alerts, so that people are aware of potential transactions that perhaps they might want to explore further before they get into them and so forth. We have a registration system for tax shelters. That's the example I was referring to earlier. Any tax shelter in Canada has to come in to the CRA and receive a number.

Mr. Dean Del Mastro: I'm sorry, John. He's going to cut me off at five minutes. Can you give me some idea as to how big you think this problem may be, how much tax avoidance is occurring?

Mr. John Kowalski: We can get the actual numbers in terms of the growth in the tax shelters. I simply wanted to indicate that over the years we have noticed a significant growth in the number of tax shelters that are being promoted and in the number of investors who are participating in the tax shelters. We recently had an alert on that and the numbers are out there on our Internet site.

But we can endeavour to provide those to the committee, with the chair's concurrence.

Mr. Dean Del Mastro: Thank you.

Would you agree that primarily the vast amount of money, the large sums of money that we're really trying to get a handle on, is predominantly large corporate money? We're not talking about corner stores; we're talking about large multinational corporations that are using their reach amongst multiple jurisdictions to avoid paying taxes through tax havens.

Mr. John Kowalski: I would say that approximately 40% of the additional tax assessed by the agency is related to large corporations.

Mr. Dean Del Mastro: Right. And if we go back to the point of the chair, if we changed some of the rules around interest deductibility, that number could be much higher, because they're not necessarily doing anything wrong if they're working within the current framework of taxation policy in Canada. In fact, they could very easily be going along with the rules that are in place. We may not like the rules. We may not feel that those rules are bringing in tax fairness, and I think that's what the finance minister has indicated when he's talking about cracking down on double-dipping. But that number could change substantially if we changed the rules.

Would you agree with that?

Mr. John Kowalski: I wouldn't be in a position to speculate on the revenue implications of a particular budgetary provision.

Mr. Dean Del Mastro: But having said that, we've already established the double-dipping, the chart you've provided us, which, if we're looking at the example of a \$200 million loan.... Now, I've got good credit, but I don't think anybody is about to give me that much. It would be a significant corporation that would borrow \$200

million. We've established that in this example there's nothing wrong with what they've done here. They can deduct the interest twice. So if we were to change that rule, it doesn't take a lot of deductive reasoning to determine that we're going to bring in an awful lot more money.

The Chair: We'll have to leave that as a point and move to Mr. Pacetti now, for five minutes.

Mr. Massimo Pacetti (Saint-Léonard—Saint-Michel, Lib.): Thank you, Mr. Chairman.

Perhaps this is the point that Mr. Del Mastro was getting to, and I think a few others, but we're sort of getting away from what we're trying to do here. We're trying to find ways in which we can help your job to increase collections and, hopefully, have Canadian taxpayers, whether they're in Canada or not, pay their fair share. I think we're having a bit of a problem between tax avoidance and tax evasion, and where some of these transactions cross a thin line and we're not sure if they are tax avoidance or tax evasion. But everybody seems to be talking about tax avoidance like it is tax evasion and vice versa. So we're asking for your help.

From what I've heard today, I haven't heard anything that we can put into a report or say this is what we should be doing to help Revenue Canada. We've had Revenue Canada, CRA, come before the committee numerous times in the last couple of months. We did the five-year review, and we had CRA come before the committee when we looked at money laundering and anti-terrorism, and there were some additional items or tools that I wanted to provide to give Revenue Canada the ability to look at certain transactions, but there doesn't seem to be a willingness.

Can somebody help me out here? What can we do? I understand that you have laws you have to abide by—rules, regulations—but with all the capacity and all the resources that you have, you're only able to win 50% of your court cases. I understand the complexity, but I don't think that's acceptable. And who knows how many others there are that you didn't decide to pursue because you didn't think you had a chance of winning?

So who is winning on this side? Is it the guy doing the avoiding, or the girl doing the avoiding or the evading, or is it us? Are we handicapping you guys? Can we help you, so that Canadians, whether they live in Canada or not, are paying their fair share? That's the question.

• (1210)

Mr. Wayne Adams: Thank you very much. I appreciate that.

I would like to ensure that you're not left with the impression that our success rate is 50% right across. In regular appeals—we were just speaking with the Tax Executives Institute yesterday—I think we are only unsuccessful in about 15% of our cases that are heard before the courts.

Avoidance cases have always been—

Mr. Massimo Pacetti: I just want to interrupt you. You should talk about the good work that you do, because the perception out there is because we don't sensationalize all the collections that you do make afterwards or things that go, because of the privacy laws.... I know there's a lot of good work being done. The perception out there is that people don't pay their fair share. It's good to have statistics like that.

We want to make your jobs a little bit easier.

Mr. Wayne Adams: For the category of cases referred to as avoidance cases, I think any country would envy the success rate that we have. These are very difficult cases, even ensuring that we have the interpretation of the law right, collecting the documents. The one thing that I think needs to be reinforced about taxation, unlike any other category of the law, is that smart people can have 180-degree different positions, and it's very difficult to tell for certain who's incorrect.

Mr. Massimo Pacetti: I understand that. But let's take the case, because we have limited time, of collecting documents. What is the problem with collecting documents? If that is a problem, can we help you somehow? What is the problem with collecting documents?

Mr. Brian McCauley: It's certainly something we can go back and look at in terms of whether or not there are any administrative suggestions or ideas that we could perhaps provide to the committee. But as was pointed out by an earlier member, the most significant measures would be either policy or legislative measures, which, of course, Finance will speak to.

Certainly one of the things we've always put a focus on is information and business intelligence. We have been focusing on that, and there have been some moves both to invest in that area and to put a greater emphasis, as was mentioned in the last budget, on exchange of information agreements with tax havens and others. We think that's going to be very helpful.

As for additional investment, at the end of the day, having additional moneys, the money that is proposed in the budget, will certainly help us do our jobs.

Mr. Massimo Pacetti: What is the additional money going to be used for? From my experience, all that happens is that CRA just asks for more information, and all you're doing is creating more work and more paperwork, and not much is coming out of there.

So if somebody is going to put a tax shelter together, all that Revenue Canada is asking for is for more forms to be filed and more information, but there don't seem to be tax shelters closing down—or if you want to call them the loopholes. You just said it yourself; they seem to be increasing. All that happens is that the people putting these tax shelters together are hiring additional resources—

The Chair: Thank you, Mr. Pacetti.

We're going to move on to Mr. Dykstra now.

Mr. Rick Dykstra (St. Catharines, CPC): Thank you, Chair.

I just have a couple of things, maybe to follow up a little bit, in a more general sense, on what Mr. Pacetti is asking about.

Approximately how many tax haven cases does the CRA prosecute on an annual basis? That obviously would lead to the

reasons why you requested and received more funding to be able to prosecute and research.

• (1215)

Mr. Brian McCauley: I think you mean by “prosecute” that it's the number of files we're pursuing, and I think that would get back to the number John was using of some 305. One might say a case could be quite large and significant in terms of the level of effort represented by that one number.

Mr. Fred O'Riordan: Maybe I could add a little bit to that. I realize that time is of the essence, so I'll try to be very brief here in doing that.

When you say “prosecutions”, it masks something. Normally these don't reach the prosecution stage. A lot of the tools we're using that are directed at avoidance transactions involving havens are not things like double-dips.

Mr. Rick Dykstra: Maybe I'll take the word “prosecute” out and insert the word “engage”.

Mr. Fred O'Riordan: Just audit, for example. We do transfer pricing audits with large corporations under section 247 of the act. You can look up transfer pricing, and basically what we're trying to say is that when there are related entities with cross-border transactions.... And they are occurring all the time. It's a globalized economy. Canada is not operating in isolation. Virtually all large corporations have some degree of foreign entity involvement, either as Canadian subsidiaries...or vice versa.

We look at all of the transactions of large corporations. We audit every large corporation in Canada, using transfer pricing legislation and other things. If we find that there are non-arm's-length transactions there, we will audit and assess. There's normally not a prosecution in those cases, rather there's an assessment and a payment. We'll use our system of tax treaties, first of all, to eliminate double tax that occurs as a result of that, and secondly, to the extent that we need information, we get that information through the exchange of information provisions in the treaties.

We've talked here this morning, or Brian has, about engaging in tax exchange information agreements with havens. By definition, those are areas with which we don't have treaties. But Canada has an extensive treaty network, 86 treaties globally, and we use them all the time to get information.

Mr. Rick Dykstra: Thank you.

That's very useful from an education perspective. I would assume that the reason you need more money, to get to the brunt of this, is that you've expanded it and you're doing more engaging, so to speak, in terms of making sure we do have companies that are obviously paying a fair share of their tax.

Mr. Fred O'Riordan: Most of the money does get to the field and is used for audit, for that type of engagement you referred to. That's exactly where most of that money ends up.

Mr. Rick Dykstra: All right. I'll follow up as the chair usually does. That's why he's sitting there and I'm sitting here.

He asked a question that I was hoping to get at and maybe follow a little bit further in. It relates to the popularity of the Barbados as a result of the tax treaty, which I understand gives an exempt surplus status to Canadian foreign affiliates operating there.

Can you explain to me exactly what that means?

Mr. Brian McCauley: We will, but only if the member promises he's not going to actually try to use it.

Mr. Wayne Adams: There are an awful lot of expressions in tax that try to give some sense, maybe in two words, as you have with exempt surplus and other things, and to compress 36 pages of legislation down.

For exempt surplus, the model probably has a presumption that rates are reasonably equivalent. The model says that if Canada grants another country first right of taxation, then there won't be a second incidence of tax when that income comes back. You can debate whether that has merit from an academic perspective, but it's an approach countries take. They cede taxation to the other country, and if it's subject to tax, then they say the residual can come home without tax. There is an option of saying the residual can come home with tax, and we'll grant you foreign tax credit, but those are competing approaches from an academic perspective, and a collection of economists might tell you which way is better.

I'm sorry, I didn't mean to choke off your meter. The term "exempt surplus" is an expression that means a Canadian company can recover profits earned by its subsidiaries—referred to as affiliates—in foreign countries, bring them back, and not have a second incidence of tax until they pay it out to their shareholders. When they pay it out to their shareholders—to you and me, if we had shares—then there's an incidence of tax at that point in time.

It's fairly complicated. It's the field of economists.

The Chair: Thanks, Mr. Adams. I don't think it would take a team of economists to tell us which would be better for the company, paying 1% in the Barbados or 35% here. I don't think so.

We'll continue with Mr. Thibault.

• (1220)

Hon. Robert Thibault (West Nova, Lib.): *Merci, monsieur le président.*

You recovered \$174 million two years ago, and that increased to \$215 million last year, from aggressive international tax planning. Is that increase because of increased abuse levels, or is it because you're doing more policing?

Mr. John Kowalski: We believe it's related to a couple of things. One is certainly increased effort, because it followed the \$30 million we received in the budget of 2005, and it followed the creation of the 11 centres of expertise.

What the centres of expertise do is leverage our entire audit effort across the country, because the knowledge and the intelligence that are accrued, and the risk factors that are identified, are then communicated right across the country, and that \$215 million was for a six-month period of that year.

Hon. Robert Thibault: Okay, so it's increased effort.

Mr. John Kowalski: Yes, definitely.

Hon. Robert Thibault: Can you give me a rough 30-second profile of these people who are abusing internationally? Are they the large companies, are they the middle-income investors? Who are the people you've caught?

Mr. John Kowalski: I think the short answer would be both.

Certainly the dollar amounts and the complexity of the transactions and the complexity of the law are greatest with the larger corporations, and it's to them that we put a lot of our audit effort. The encroachment into the middle class of tax shelters and other abusive arrangements that can be sold over the Internet has certainly increased, and we've noticed that as well, but from a dollar perspective I would have to say it's more on the large corporation side.

Hon. Robert Thibault: Now, in the international investment and tax deductibility field, we have companies in Canada that are producing in Canada, have manufacturing headquarters in Canada, that need raw material, like bauxite, for example, who could buy out the foreign company, make it a subsidiary for supply, or could open up a mining activity or something, create a company to do that in another country, borrow money in the domestic market or international, and that would be deductible, and that would be quite appropriate. That wouldn't be avoiding or tax sheltering. But it becomes questionable with the new proposition as per budget day. We don't know where the minister is now, but as per budget day, that might not be allowable.

Then you have companies that would be using offshore tax havens purely for purposes of hiding income, or avoiding taxes that would otherwise be taxable.

According to your analysis to give advice to the minister prior to making his decision, what is the current loss through those types of abusive practices, and what would be the foreseen loss from the hollowing out of our corporate community because of the proper investments that could be made, that would force them to have their headquarters moved offshore, to be able to compete with the international economic community?

Mr. Brian McCauley: We don't undertake that kind of economic or fiscal analysis. It would be Finance—

Hon. Robert Thibault: But you would see it. You would be provided with that.

Mr. Brian McCauley: We only see it from the perspective, as John described it, of the files we encounter and the work we do, and we don't try to make estimates of what the global numbers are. But the Department of Finance obviously would.

Hon. Robert Thibault: But this, it seems to me, is a huge change in Canada's economic policy and our competitive and productivity policy. I have a hard time imagining that the minister would make that type of announcement without having had a wide-ranging discussion within the government, both at Finance and at Revenue, as to what it means, what kind of efforts would be needed in the future, what are the expectations for additional revenue on one hand and losses of revenue on the other.

Are you telling me that the minister made that announcement without consultation and discussions within government departments in law?

Mr. Brian McCauley: No, I didn't say that. What I said much earlier on is that we have an ongoing relationship with Finance. We contribute data and information that they request of us, but Finance obviously goes to many other sources, departments, economists in the public and private sectors, and would take all of that into view before coming to a decision. But we don't have the economists and the fiscal analysis capacity.

• (1225)

Hon. Robert Thibault: Thank you.

The Chair: Thank you, Mr. Thibault.

The next questioner is Mr. Del Mastro, and we'll finish with Mr. Crête, so that we allow time for Madam Wasylycia-Leis' motion.

Mr. Dean Del Mastro: Thank you, Mr. Chair.

I want to go back to where I was a couple of minutes ago.

The chair established that currently, the way policy works, there's nothing wrong with this double-dip structure; it's perfectly legitimate. Now, if we look at the current numbers, you said that about 40% of the money we're recovering from abuses of the tax system through tax havens is corporate. If we were to look at a way of cutting down on this double-dip structure—it may not be illegal, but inherently, if you look at it, is not ethical either—I don't think a lot of Canadians.... Certainly if I explained this to the people in my riding in Peterborough, they wouldn't like it very much if they understood that somebody could get a tax deduction for an expense that they're not really incurring.

The Chair: I think we should make it clear, though, that we're talking about tax laws here and not ethics. The two things don't necessarily go hand in hand.

Mr. Dean Del Mastro: No, no, I'm only saying that ethically, corporately.... Okay, thank you, Mr. Chair, for the clarification.

But this could really change how things are functioning and really change that distribution of taxes being collected through these efforts and measures that you're taking right now in trying to curb the use of tax havens. Am I correct?

Mr. Wayne Adams: If I may, I would clarify one assumption you had during your opening remarks, and that is that there's a view that there's nothing wrong with this structure. We challenged this structure. We challenged the Canadian entity and were unsuccessful in a court case, but two other court cases, with slightly varied facts but very similar outcomes, still will be heard by the courts if we proceed.

So as far as the determination of whether this is or isn't appropriate is concerned, I wouldn't want to leave in the appellants' minds that we've now concluded there is nothing wrong with it. We still are litigating.

Mr. Dean Del Mastro: But the finance minister wants to make sure that if you go to court and prove this structure, you win every time. That's what we're trying to establish, that we don't think this is right. We think this is skirting around a Canadian tax obligation, and that under the principle of tax fairness—trying to make sure everyone pays their fair share of taxes, which will allow us to decrease the tax burden on everyone, individuals and corporations—if we make this change, you will win 100% of the time if you prove this structure. That would be a positive change.

Mr. Wayne Adams: We would appreciate any changes that guaranteed a 100% success rate.

Mr. Dean Del Mastro: Thank you.

I have nothing further, Mr. Chair.

The Chair: Thank you, Mr. Del Mastro.

[*Translation*]

Mr. Crête.

Mr. Paul Crête: Thank you, Mr. Chair.

Mr. Adams, earlier you gave an excellent description of how funds are transferred to Barbados and then how they are returned.

If regulation 5907 were abolished, would profits be taxed automatically on their return?

[*English*]

Mr. Wayne Adams: I'd have to undertake to reflect on whether an adjustment to regulation 5907 would achieve the outcome you've described. It's likely the case, but it's about 35 pages long. I don't know whether surgically they could fix it quite as you've described, but I'd certainly take it that this is a likely outcome.

[*Translation*]

Mr. Paul Crête: I have another question.

In your document, it says that the Canada Revenue Agency is heading the seven-country working group on tax havens. You said in this connection:

[...] dealing with compliance challenges associated with the abusive use of tax havens.

We will be at the OECD next week. Is there a status information paper that you could give us? Does abusive use only affect illegal situations or does it include the massive use of a tax treaty that is not necessarily illegal, but that obviously constitutes a significant case of tax avoidance?

• (1230)

[*English*]

Mr. Fred O'Riordan: Thank you for the question.

As I understood it, the first part of the question was about the seven-country working group on tax havens, and then, distinct from that, about the OECD.

The seven-country working group on tax havens is distinct and separate from the OECD. The focus of the seven-country group is more on individuals, and high-wealth individuals, than on corporations. Canada provides secretariat services to the seven countries involved, and we have a number of projects under way that deal with bank—

[Translation]

Mr. Paul Crête: In your text, you say that the CRA works with the OECD. In it we read: [...] including its seven-country tax haven working group [...].

[...] including its seven-country tax haven working group [...].

That gives the impression that this group belongs to the OECD. Is that not right?

[English]

Mr. Fred O'Riordan: I see that as well, and it is misleading. I'm sorry.

[Translation]

Mr. Paul Crête: All right, but can you send us the information?

Thank you.

The Chair: Thank you, Sir.

[English]

To continue now, we'll go to Mr. Pacetti, for three minutes.

Mr. Massimo Pacetti: Thank you, Mr. Chairman.

Let me continue my line of questioning from when I was asking about the additional resources and what they can be used for. I think, Mr. O'Riordan, you had an answer for me regarding what the CRA can do with the additional resources.

Mr. Fred O'Riordan: What I was saying is that most of the resources find their way into field audit work. That's really where we find that the greatest return on the investment is.

Having said that, Brian is chiding me a little bit about where else in the agency those resources could go. Obviously there is a funding formula for any additional resource, and so it's not just to our function, the audit function in the field. It goes to Justice for advice; it goes to Justice for litigation, to assist us in court; it goes to appeals; and so on. But the lion's share of the money, once it's allocated for that purpose, does go to additional audit, either to direct audit in the field or to the centres of expertise, where they engage in activities that have an effect of increasing the effectiveness of the audit work across the country.

Mr. Massimo Pacetti: So you're comfortable that it will have an effective tax collection aspect. It will increase our collection by increasing the resources.

Mr. Fred O'Riordan: Absolutely.

Mr. Massimo Pacetti: Mr. McCauley, I think you had some suggestions we could make to help your organization to better collect more revenues.

Mr. Brian McCauley: Yes, and we may reflect more on this as well and provide additional information to the committee.

Certainly one of the areas of focus through the centres of expertise and others is our work internationally in business intelligence and some of the...I'll call them the inputs into the risk analysis and the targeting that we do. We have been working quite diligently with the OECD and other organizations. That's where, as well, some of those resources go. Basically, if we understand the problem and we can get ahead of it, then we can do a better job.

Mr. Massimo Pacetti: I have a quick question.

Because we're sort of legitimizing the fact that big corporations can do business with Barbados and then it goes into the surplus account, and then the Canadian companies can repatriate the income back tax-free per se, are most Canadian corporations taking advantage of the tax treaty that we have in Barbados, or are there still Canadian companies using other tax havens that are not necessarily recognized for Canadian companies?

Mr. Brian McCauley: I don't know that we know the answer to that, but certainly Barbados does not have any exclusive privilege when it comes to tax havens.

Mr. Massimo Pacetti: Mr. Adams, I have just a quick question.

With the chart that you gave us, you're able to see the whole corporate structure. When you're taking big companies or corporations to court over items like this, do you get to see the whole corporate structure, or are there some corporate structures that are not cooperating in terms of giving you information around those tax havens?

Mr. Wayne Adams: I would think that we have a better than reasonable understanding of the corporate structure. We have powers to compel them to produce information. There are rules that if they don't produce the information when we ask for it, they can't use it to defend themselves in court. Also, in an examination for discovery that precedes the actual hearing of the trial, they're compelled by an officer of the court to respond to our requests for explanations and/or documents.

I think it steps over the line when they're deliberately hiding documents. You move into the realm of evasion then. Avoidance really is that the books are open, they think their strategy works, and they invite the discussion. It doesn't have the attributes of criminal or hidden documents.

● (1235)

[Translation]

The Chair: Thank you very much, Sir.

[English]

In response to Mr. Pacetti's inquiry about other tax jurisdictions, I believe in our notes that were supplied to committee members there is reference to three jurisdictions that have preferential tax regimes: Barbados, Cypress, and Malta, which have been listed as tax havens by the OECD. It would be a surprise if those three jurisdictions weren't very appealing to certain tax practices, would it not?

Mr. Wayne Adams: They are attractive for the particular income taxation model they have. There are aspects to Malta that are attractive, but there are aspects to other countries that have incentives in place. Ireland is still a country that attracts a certain amount of global investment because they have low tax rates. I don't think it would be fair to point to just a small group, but there's no doubt that they are attractive.

The Chair: I know, but you're not suggesting that the OECD is somehow being unfair by listing them as tax havens, are you?

Mr. Wayne Adams: I'm not suggesting they are unfair, no.

The Chair: Oh, good. I just want to be clear on that.

Madame Wasylycia-Leis, for three minutes.

Ms. Judy Wasylycia-Leis: My question was on Barbados as well, because in fact in the past this has been a focus of considerable debate in Parliament. The Liberals closed a considerable number of tax havens but left Barbados and a couple of others. The Conservatives have identified this as a concern and promised to shut down the Barbados tax haven. It's clearly a lucrative place to go. If Merck Frosst puts \$2 billion into Barbados to avoid paying taxes, it means we've left something undone. There is unfinished business.

In the past, when the Liberals were in government, John McKay tried to give me an explanation of why Barbados must stay as a tax haven. Other than the fact that this was the favoured place for Canada Steamship Lines, I don't know of an explanation.

So can you tell us why particularly Barbados has been excluded from the list of tax havens that were shut down?

Mr. Brian McCauley: Actually, no. We administer those decisions, and probably the reason member McKay, when he was Parliamentary Secretary to the Minister of Finance, would have tried to give that answer is that it properly comes from the Department of Finance, who are responsible for—

Ms. Judy Wasylycia-Leis: Can you give us any reason from a revenue point of view why Barbados has been left untouched vis-à-vis all the other places that were shut down as tax havens by the Liberal government?

Mr. Brian McCauley: I wouldn't have a view on that. I don't know.

Mr. John Kowalski: I think the only thing we can say is that as a revenue administration, we administer the tax laws and the tax treaties with other countries, including the treaty with Barbados, as approved by Parliament. Treaties are a matter of tax policy. They are the responsibility of the Department of Finance. If you go to the Department of Finance website, I believe you'll see the 86 that are in force. They have a number of others that have been negotiated and are not quite in force yet, and they also have a number of others that are under negotiation or re-negotiation, and I think Barbados is listed in that category.

The Chair: That will be for persons taking the fifth, I think, Mr. Kowalski.

We have two more questioners, Mr. McKay and then Madam Ablonczy.

Mr. McKay.

Hon. John McKay: Obviously the explanation for Ms. Wasylycia-Leis didn't work. There's always some question as to whether Ms. Wasylycia-Leis actually understands the question or the answer.

Now, second, the first issue—

The Chair: Your time is almost up. I would urge you to ask your question.

Hon. John McKay: Thank you very much. I appreciate that guidance, Chair.

The first issue is, do you have a handle on how much money we're talking about here? Did you give Finance any advice as to how much money this so-called double-dipping structure actually involves?

Mr. Brian McCauley: No.

Hon. John McKay: Okay. So Finance didn't actually ask you.

Mr. Brian McCauley: Just to clarify, we give information on cases and files and what we're doing, and they have access to that under the Income Tax Act. But we did not get into and provide Finance with estimates of the impact.

Hon. John McKay: So Revenue has not told Finance what the global impact of this kind of structure is on the revenues of the nation. Okay.

The second issue is that, as I understand it, on the files that go to court you essentially are at a standstill—it's basically six for them, six for you—and there is benefit that generates from your effort. If in fact you put more money into it, you actually do generate more revenues for the treasury.

Is that a fair statement? It seems to be your evidence.

You don't know how much. There is no real issue of right or wrong. These are tax schemes that virtually every corporation in Canada with any international operation sets up, so you'd pretty well include all of the financial sector, all of the banks, all of the trust companies, all of the resource companies, etc. These are structures that are used on a regular basis in order for Canadian companies to be competitive.

Is that a fair statement?

• (1240)

Mr. Wayne Adams: I don't know whether it would be fair for us to comment on whether it is a way to remain competitive globally, but if I may indulge, when you talk about our being at a standstill, there are several hundred avoidance assessments raised each year, and most of those are accepted by the taxpayers.

The fact that it is expensive to go to court and that we win 50% of the time, I believe, both reinforces the merits of the efforts of John and Fred's area and also deters people from litigating in court.

Hon. John McKay: I think that's actually a fair statement, because what happens outside of court is probably as important, if not more important, than the actual cases you litigate.

A final point is that we, as a committee, are trying to recommend something to the minister, and you folks look at this on a day-to-day basis. What is it in the legislation that at this point is inadequate and, if fixed, would still leave us in a competitive position vis-à-vis other nations?

There has to be some fix. David Dodge didn't seem to think there was one, but I'd be interested in your opinion.

Mr. Brian McCauley: We don't provide public comment on legislative or policy changes. We leave that to the Minister of Finance.

Hon. John McKay: But do you internally have that opinion, and have you shared it with the finance minister?

Mr. Brian McCauley: We have regular contacts, obviously, with the department and with Finance officials on a whole range of issues. They sit on the GAAR committee with Wayne, so Finance would certainly be well aware of our views and opinions on cases and the difficulties we have. In fact, they're in there with us, as Wayne was saying.

Hon. John McKay: I think the emphasis is on difficulties.

The Chair: Although the competitiveness point Mr. McKay raises obviously requires a subjective evaluation, it's fair to say that the principal purpose is to reduce the tax obligation. I think that's prima facie, right? To reduce the tax obligation is why the money's flowing there, correct? It would follow, then, that a way to address this would be to reduce the corporate tax rate. Wouldn't it be a fair assumption that the balance between...? Actually, I think you said in response to the Auditor General's previous comments at various times—and the finance department has as well—that it's the slope of the high tax rate in our jurisdiction relative to others that causes the flow of capital to the low-tax jurisdiction.

Isn't that a fair observation?

Mr. Wayne Adams: It certainly is one. I think it is a complex set of factors, though, that causes a country to reflect on its domestic tax policy vis-à-vis trade partners and trade competitors. I think it's just one aspect.

The Chair: Sure, good, and we're forced to deal with that one aspect. But we shouldn't isolate it from all the others, of course.

Madam Ablonczy is next.

Ms. Diane Ablonczy (Calgary—Nose Hill, CPC): Mr. Chairman, I'd like to switch the channel a little bit.

We've been talking about corporate tax avoidance, but it's come to my attention that there are grassroots tax avoidance schemes. One was in the media last week, I think; donations were funnelled through a particular church group, and it turned out not to be a legitimate arrangement.

Another one came to my attention. It was, again, donations to a charity. Participants were largely people of faith. The result was that families paid no tax, actually. Then there was another one that came to my attention through a colleague, another sort of charitable arrangement, which I got an opinion on through the department.

If I have recently come to know of three of these kinds of arrangements, there seems to be a proliferation of these tax avoidance schemes through good, well-intentioned charitable

donations. How do you try to advise taxpayers not to get caught up in these schemes?

These are good people. They're well-meaning people. They've been told these are legitimate schemes. Do you just wait and nail them after the fact, or are you proactive in trying to get them not to get involved in the first place?

• (1245)

Mr. John Kowalski: Thank you for the question.

We're certainly trying to be proactive in this regard. Over the last five or six years at least, we've been issuing tax alerts and news releases on the Internet site, trying to alert investors and Canadians across the country to the risks and pitfalls engendered in these particular kinds of donation arrangements. We have been trying to advise them to be prudent, to take care, to seek independent financial advice, and to challenge certain assumptions that they're being faced with.

One of our latest releases talked about the actual numbers of audits we've done, the number of investors who have been caught by these kinds of schemes, the amounts of money that have been reassessed, and this type of thing. We'll certainly look to do more in this regard, but we have been trying to be proactive in letting people know about those schemes.

Ms. Diane Ablonczy: Have you had strategic discussions about how to deal with it—maybe some advertising, or a notice with the tax forms? I'm actually really quite worried about this.

Mr. Brian McCauley: So are we. Actually, in February and March we did run an advertising campaign that was close to \$300,000, specifically advising Canadians about where to go for information on donations and how to make themselves more aware. We developed a series of calendars reaching out to senior citizens and others in order to warn them. That was in cooperation with the provinces, and we shared the funding. We also ran and provided a series of brochures targeted at new Canadians and other languages so that those communities were also aware.

We are concerned. We've been stepping it up, and we now have a partnership arrangement with a number of large umbrella associations and charities in the voluntary sector to continue to focus on the information and awareness at the front end. We're actually being very aggressive, both on what I'll call the auditing side and also at the front end. We are concerned about it.

The Chair: Thank you, Ms. Ablonczy and Mr. McCauley. Thank you all.

Gentlemen, we appreciate your time today very much. As you could tell by the response, committee members are very interested in your expertise. We appreciate your being here. You're excused.

We'll now move to some motions, but we have a housekeeping issue first. We'll deal with that very quickly, I hope, and then move to Madam Wasylycia-Leis's motion.

Go ahead, Mr. Pacetti.

Mr. Massimo Pacetti: From my understanding, we have a visit from a senior parliamentary delegation from Pakistan. I move that the Standing Committee on Finance host a luncheon with a senior parliamentary delegation from Pakistan in Ottawa, accompanied by the Deputy Speaker of the National Assembly, Sardar Muhammad Yaqoob, on Wednesday, May 16, 2007.

We're going to organize a luncheon, from what I understand.

(Motion agreed to)

Mr. Massimo Pacetti: Perhaps I can add to that. People who are going to attend the luncheon from this committee, you're all invited to do so, but please confirm with Elizabeth, because we are going to have to pay for lunch. If you say you're going to attend, please attend. Okay?

That's it. Thank you.

Everybody from the committee is invited.

The Chair: When Massimo says "we", he means the committee.

Mr. Massimo Pacetti: Yes.

The Chair: Good. Thank you.

Madam Wasylycia-Leis, over to you.

Ms. Judy Wasylycia-Leis: Thank you.

I gave notice of the motion. You have it before you. I will not read the motion, since I assume everyone has copies.

It is based on the hearings that we held with respect to ATMs and electronic payments. It requires this committee to request some information from the major chartered banks regarding costs of providing service through ATMs, the fees involved and the profits entailed. So it is a basic motion and request that this information be provided to this committee by the end of May, and that then be considered by this committee in terms of its further deliberation on the study and a report to Parliament.

Just by way of elaboration, let me say the following. First of all, the motion that was originally adopted by this committee called for a study. It didn't call for a set of hearings and to hear some witnesses. A study has usually been meant by this committee to mean a beginning, a middle, and an end.

I know that because it didn't technically raise the suggestion that this committee report back or have a concluding statement and a report to Parliament on our study, some members of this committee have felt it advantageous to try to ignore any further deliberations on this matter. But I want the committee to know that in fact it is not uncommon for motions to come before this committee calling for a study, and it's not uncommon, then, for the committee to conclude its deliberations. Having tested this at the steering committee last week, around which we didn't have a final discussion or conclusion, it was my feeling that I had to make sure that our motion entailed that concern.

So I have tried in this motion to deal with a very important outstanding concern, which is that of all of our witnesses, except for the big banks, suggesting this committee do its work and get information about the fees of ATMs, the costs involved, and the profits that follow. That, of course, Mr. Chairperson, you will know came from every organization, including the Canadian Consumer Initiative, the Community Coalition for Reinvestment, the Option consommateurs, and our economist Mr. Lew Johnson. Even the Consumers Association of Canada, I might add, felt that the least this committee could do would be to get the information and then make further determination about what we do with the information and how we take this issue further.

The motion does not suggest that we breach confidentiality, it does not specify that banks make this information publicly wide open. There are ways that we can receive the information and deal with it that won't breach confidentiality, so I hope the committee members won't use that excuse as a way to defeat this motion.

I will just conclude, Mr. Chairperson, by saying that I think it's imperative for us to do everything we can to convince the banks to follow some basic standards of transparency and accountability. So when it comes to asking for information around ATM fees, I should think, Mr. Chairperson, we don't want to just accept the tired rhetoric of the banks, who say they can't possibly provide this to us, and roll over and play dead. I hope that we will at least ask for the information and then see where it takes us.

• (1250)

The Chair: Thank you.

Madam Wasylycia-Leis has a motion that is very straightforward, committee members. In the interests of time, I would appreciate it if members would keep their comments specifically to the motion, and brief.

Mr. St-Cyr.

[*Translation*]

Mr. Thierry St-Cyr: Mr. Chair, I propose an amendment. I am going to read it and explain it, and then I am going to read again, before giving it to the clerk. Under this amendment, the final sentence of the motion would read as follows:

That the committee request that this information be delivered confidentially to the competition commissioner by September 1, 2007, and that he then provide the committee with the cumulative data gathered for the industry.

The purpose of this amendment is somewhat connected to the intervention I made during the committee hearings on this subject. I do not think that we need figures by bank. This is not really relevant; we do not want to know the status of competition among the banks.

As parliamentarians, however, we would like to have an overview of the state of the industry, and know what the averages are within it. Then we could consider the relevance of other stages.

[*English*]

The Chair: I'll ask the clerk to translate the amendment for those of you who want a repeat.

The Clerk of the Committee (Ms. Elizabeth Kingston): The amendment is that the committee request that this information be forwarded in a confidential fashion to the Commissioner of Competition prior to September 1, 2007, and that the Commissioner of Competition subsequently send to the committee the cumulative information as regrouped by industry.

The Chair: Is there any discussion on the motion?

Mr. Thibault, do you want to speak to the amendment to the motion?

•(1255)

Hon. Robert Thibault: I want to speak to the motion.

The Chair: We're only on the amendment now. Do you want to speak to the amendment?

Ms. Judy Wasylycia-Leis: I have a question about the ability of the Competition Bureau to be able to do this within its mandate. If staff could please address that, it would help.

The Chair: Mr. St-Cyr, would you like to respond to that inquiry by Madam Wasylycia-Leis?

[Translation]

Mr. Thierry St-Cyr: He is going to be asked. I did not catch how to translate the word "ability," but someone just has to add up the figures, and that is not very complicated. We simply want this to be done by someone independent. I imagine that, once he is asked to do this addition and tell us the average, he will happily agree to it.

[English]

Ms. Judy Wasylycia-Leis: Are you saying that it doesn't matter where, as long as there's an independent analysis of it?

My question to the research staff is on the role of the Competition Bureau in this matter. Is that the logical place for it to go? I don't mind supporting this if I—

The Chair: I think that's a fair question. I'd like to make a friendly suggestion to Mr. St-Cyr that may address this and move the discussion forward, I hope.

Mr. St-Cyr, we don't know if the Competition Bureau would release any information, having received it, or if they could. Without a study of the legislation governing their practices, we can't be sure we would get any information. Perhaps you could add the words "if possible" to your motion. It would say that this information be forwarded, if possible.

We can't compel them, obviously, by a motion of our committee, to violate any of their rules. We should acknowledge that they may not be able, having obtained the information from the banks, to forward it without violating certain aspects of their mandate. So could we simply add the words "if possible" to the motion?

Are you in agreement with that?

[Translation]

Mr. Thierry St-Cyr: All right.

[English]

The Chair: We're back to the amendment.

Madam Wasylycia-Leis, continue.

Ms. Judy Wasylycia-Leis: I appreciate the clarification, but obviously if we gut my original motion to say this, we are left with nothing, except maybe the possibility that the Competition Bureau might possibly share with us some information. We have no certainty about that. This committee then abdicates its responsibility.

I would hope that the Bloc has a friendly amendment to their friendly amendment, which would say that failing that, this committee then—

Mr. Thierry St-Cyr: We'll see.

Ms. Judy Wasylycia-Leis: If it's a wait-and-see attitude on the part of the Bloc, and this is the best they can do to respond to groups like Action Réseau Consommateur, which is very definitive—

The Chair: Okay, you've made your point and you're past it now.

Ms. Judy Wasylycia-Leis: —then I certainly don't think this is worthwhile.

The Chair: Now, Mr. Crête, to the amendment.

[Translation]

Mr. Paul Crête: I am ready to vote.

[English]

The Chair: *D'accord.*

All in favour of the amendment?

Ms. Judy Wasylycia-Leis: Can we have a recorded vote?

The Chair: A recorded vote has been requested. A recorded vote, please.

(Amendment negated: nays 8; yeas 3)

The Chair: We will go back to the main motion. Is there any further discussion?

Mr. Thibault.

Hon. Robert Thibault: I'd just like to say briefly that I can't support this motion. I have a problem that we're singling out one sector of the financial institutions. We don't talk about the credit unions or the white labels, for one thing.

But my main point is about what we've heard here at the committee when we heard the Competition Bureau talk about taking their initial look at it and how they then permitted the white labels and got the industry to be competitive. I think it resolved the problems that were there at the time.

The two remaining questions I have I don't think are the work of the committee. First, is there true competitive behaviour? The Competition Bureau can handle that. I don't think we have to go through the figures of the banks and the other financial institutions. The second is the question of the captive markets—universities, airports, and all those questions—and from the information we've had, the banks weren't overly participating in that one; it was the white labels.

So for those reasons, I won't support it.

•(1300)

The Chair: Are there any other interventions?

To conclude, then, Madam Wasylycia-Leis.

Ms. Judy Wasylycia-Leis: Thank you.

I appreciate the very brief discussion we've had on this issue; however, I feel we've not done our work as a committee to thoroughly investigate this matter or to live up to the spirit of the motion that we agreed to.

I would say to committee members that it was fine when folks were here to question people about what they assume to be the average cost for the banks, without any verification, and to be very critical of the suggestions that in fact there's a huge profit margin and price gouging. But then not to ask for the facts and to get the banks to in some way or another give us the information so that we can make that determination is an absolute abdication of responsibility.

We have a Bank Act for the very specific reason of holding banks to account, so that we represent the public's interests and we do our job as parliamentarians. For this committee not to even ask the banks for information pertaining to bank fees specifically relating to ATMs is, to me, just beyond comprehension, in terms of our role as members of Parliament.

I'm not saying we should ask them to break confidentiality. I'm not saying we should do something that's unheard of. The finance committee has in the past taken very seriously its responsibilities around the Bank Act and done thorough investigations.

Here, we have a request to simply get some basic information, to ask the banks to provide us with some information that's quite possible given the fact that, as the CBA has said to us clearly, there is no cross-subsidization between different departments of each bank. So it's not impossible. It's readily available. I'm not suggesting it be done to breach any privacy or secrecy or affect the competition between the banks. It is for us to do our job in terms of the fundamental role we have, which is to protect the public interest.

I would hope that members here would see the light of day and support this very basic motion.

The Chair: Thank you, madam.

Ms. Judy Wasylycia-Leis: A recorded vote, please.

The Chair: Thank you, madam.

(Motion negated: nays 8; yeas 3)

The Chair: We'll see you Thursday to continue our deliberations on the tax havens.

We are adjourned.

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