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Chair

Mr. James Rajotte

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● (0845)

[*English*]

The Chair (Mr. James Rajotte (Edmonton—Leduc, CPC)): I call to order this 109th meeting of the Standing Committee on Finance.

Our orders today, pursuant to Standing Order 108(2), include the subject matter of Bill C-48. I'll just remind colleagues this is a pre-study of the bill, as this bill has not yet been referred to this committee. Bill C-48 is an act to amend the Income Tax Act, the Excise Tax Act, the Federal-Provincial Fiscal Arrangements Act, the First Nations Goods and Services Tax Act, and related legislation.

We're very pleased to have with us here today three witnesses. A fourth witness will be joining us; I understand his plane has delayed him somewhat.

We have Mr. Michael Vineberg. Welcome to the committee this morning.

From the Certified General Accountants Association of Canada, we have Ms. Carole Presseault, vice-president. Welcome.

And we have, from Osler, Hoskin and Harcourt LLP, Mr. Andrew Kingissepp, partner.

Welcome to all of you. You each have five minutes for an opening statement.

We'll start with Mr. Vineberg and then move down the list.

Mr. Michael Vineberg (As an Individual): Thank you, Mr. Chairman and honourable members. Thank you very much for the invitation to appear before you today.

I would like to address a possible anomaly of foreign trusts, which only have a marginal relationship with Canada, as well as clause 274 of the bill, remedying an inequity in the departure tax provisions.

Trusts are established for a lengthy term, whether by deed or by will. The principal purpose of a family trust is to divide functions of administration and beneficial ownership, with settlors often arranging for assets to be held in trust for two or three generations.

There are numerous Canadians who established trusts 60 or 80 years ago, with respect to which most of the family beneficiaries were born and have long been resident elsewhere, and the trust administration has similarly been resituated. These trusts generally have no Canadian assets and their ancestral relationship with Canada may even have been forgotten.

In the event a single beneficiary, perhaps a great-grandchild of the settlor, remains in Canada, the trust would, however, be deemed to constitute a section 94 trust, subject to Canadian taxation, generally on its full income, notwithstanding that the trust assets, the trust administration, and most of the beneficiaries are elsewhere. This would, no doubt, come as a surprise, a most unwelcome surprise, to the foreign trust, the trustees, and in particular to the non-resident beneficiaries.

Unless the interest of the Canadian resident beneficiary could be segregated in a separate trust, which is probably not feasible, or the Canadian resident could be persuaded to give up his or her interest, which wouldn't be fair, the foreign trustees are placed in a quandary. While they may wish to comply with Canadian law, generally speaking, under trust law they would not be able to comply because the Canadian tax obligation would not be enforceable. Taxing a foreign resident trust on its entire income, based upon the slender thread of a single Canadian resident beneficiary, often with a minor interest, is excessive, in my opinion.

This could be remedied as set forth in this submission by excluding non-resident trusts in which Canadian residents may have a minor interest, 10% or 20%, excluding Canadian trusts established 20 or more years ago, or perhaps taxing only the share of the trust allocable to Canadian residents. This latter alternative could be effected through an elective mechanism similar to the QEF mechanism in the United States code. This issue could perhaps be reviewed by Finance after the adoption of the bill to determine the appropriateness of a technical amendment.

Clause 274 will remedy a longstanding problem under section 128.1 relating to departure tax for individuals who reside in Canada for less than five years. Foreign entrepreneurs come to our country for several years, owning shares in their companies. They establish businesses and jobs and then return to their country of origin. In the event their company shares were subject to a corporate reorganization, even one without any economic effect, which is entirely tax free in Canada, they would, however, be subject to Canadian departure tax upon their leave.

The exemption from the departure tax liability relates only to identical shares that the person held upon his or her migration to Canada. This problem will, fortunately, be remedied such that a share reorganization or other tax-free event would not deny the availability of the exemption. This remedial provision will assist in the establishment of Canadian businesses by foreign entrepreneurs who may wish to come to our country for a limited time, and it gives effect to the original intent of subsection 128.1(4).

Lastly—and I believe I share the views of my colleagues here as well as many outside—the adoption of the bill will be welcomed, as it will finally enact provisions, many of which were originally proposed in 1999, and which will have effect from 2007 or 2010, and in certain instances even earlier.

Thank you.

● (0850)

The Chair: Thank you very much for your remarks.

[*Translation*]

Ms. Presseault, you now have the floor.

Ms. Carole Presseault (Vice-President, Government and Regulatory Affairs, Certified General Accountants Association of Canada): Thank you, Mr. Chair.

Once again, it is a pleasure to appear before you. This time, it is to speak to you about our point of view on Bill C-48.

First of all, I wish to say that we support the tabling of the bill and that we encourage you to move swiftly to pass this important piece of legislation. The bill deals with a massive backlog of unlegislated tax measures. Its passage would, in our opinion, bring greater clarity to the tax system and strengthen the integrity of our laws.

We do of course have some concerns about the way in which technical amendments to the Income Tax Act are managed by the government and Parliament.

[*English*]

I will speak today about the process-related issues and briefly focus on three particular themes: where we have been, what we have learned, and where we go from here.

There are a few things we do know. For many reasons, most of them quite legitimate, it has been more than 11 years since an income tax technical bill was passed by Parliament. This delay has created, obviously, a significant backlog of unlegislated tax measures —400 of them, as estimated by the Auditor General in 2009.

What have we learned? We all know these delayed technical amendments cause serious difficulties for taxpayers, businesses, professional accountants and their clients, and of course for government. These include lack of clarity and certainty in tax legislation, inability of Canadians to self-assess or correctly calculate taxes, higher costs for taxpayers to obtain professional advice to comply with tax law, absence of appeal rights for taxpayers for unlegislated measures, less efficiency in doing business transactions, and likely a greater cynicism about the fairness of the tax system.

This past December, CGA-Canada convened a summit on tax simplification, which some of you attended, and brought together 60 stakeholders, public officials, and thought leaders on tax policy. Many well-informed recommendations were generated during that day in the areas of compliance, tax planning, and policy-making, but a majority of participants expressed concerns about the lengthy delays in legislating technical tax amendments and agreed that this situation should not be permitted to happen again. Based on this idea, one of the chief recommendations stemming from this forum was that legislation be brought forward in a timely manner.

You are now tasked with the challenge of having to scrutinize this mammoth piece of legislation, almost 1,000 pages in size, which represents about one-third of the length of the entire Income Tax Act. This is no small feat. The complexity and scope of these highly technical measures put an enormous strain on the oversight abilities of parliamentarians.

● (0855)

[*Translation*]

How can we improve the situation?

Clearly, there is a need for a better process to deal with passing tax amendments. In the debates on Bill C-48, members from the government and opposition spoke about the need for Parliament to regularly adopt technical tax legislation in a timely manner so the situation does not repeat itself.

CGA-Canada has proposed that a process be introduced that would bring discipline to the manner in which technical tax amendments are legislated.

We understand that, as a matter of basic housekeeping, the intention was that government bring forward an annual technical bill of routine amendments. However, only four income tax technical bills have been enacted since 1991.

[*English*]

We know there have been some discussions in the House Debates and at committee about our suggestion to introduce a sunset mechanism. We think this should still be adopted, despite some of the opposition. What we mean by a sunset mechanism is that if a tax policy change is announced but is not incorporated into legislation within what we say is a reasonable period of time, the measure would lapse. This measure, although drastic according to some people, would create the necessary discipline to bring forward tax amendments, say within a period of 24 months, as opposed to sitting like this one for more than a decade.

We urge you, as members of the Standing Committee on Finance, to seriously consider this proposal. We really do think it would bring fairness, clarity, certainty, and transparency to tax legislation. We think this is what good governance and responsible public administration are about. We believe it is in the best interests of all Canadians, and it should be a priority for Parliament.

We thank you for your time and would be pleased to participate in the question period.

The Chair: Thank you very much for your presentation.

We'll now hear from Mr. Kingissepp.

Mr. Andrew Kingissepp (Partner, Taxation, Osler, Hoskin and Harcourt LLP): Good morning, and thank you, Mr. Chairman.

Thank you for inviting me to appear before this committee to provide some insights into one specific aspect of Bill C-48.

I'm a tax partner at Osler, Hoskin & Harcourt LLP, a national Canadian law firm.

My submission today deals with the proposed technical amendment to section 86.1 of the Income Tax Act, which is included in Bill C-48.

First, let me say that we very much support these amendments, and we commend the members of all parties for indicating their support for Bill C-48.

Second, I would echo the comments of the previous witness to encourage all parties to enact this proposed legislation into law at the earliest opportunity.

Over the last 10 years, and actually a little bit longer than that, our firm has represented the interests of over 80 Canadian individuals who have been patiently waiting for the section 86.1 amendment to become law. While the predicament these individuals find themselves in has a lengthy history, in my five minutes I don't have time to address all of that. In simple terms, the issue is about ensuring that share distributions by certain foreign private corporations receive the same tax treatment to a Canadian taxpayer receiving such shares as share distributions by certain foreign publicly traded corporations.

This discrepancy in treatment arose in June 2001 when Parliament enacted section 86.1 of the Income Tax Act. That's the rule that provides tax-deferred rollover treatment for foreign share distributions, but only for foreign publicly listed corporations. In the situation we were concerned with, the transaction spinoff was by a foreign privately held company—it was implemented in 2000—and it involved the 80-odd Canadian shareholders we represent. They met all of the requirements of the rule, except that the shares of the distributing company were not listed on a U.S. stock exchange.

There were discussions with the Department of Finance, and as a result of that it was recommended to the Minister of Finance and a comfort letter was issued to the effect that section 86.1 would be amended to allow Canadian taxpayers receiving share distributions from certain foreign privately held companies registered with the SEC to get the same treatment. In particular, it was agreed that the registration and disclosure requirements for a private company SEC registrant would be basically analogous to those for a U.S. public company.

A commitment was made by the government of the day to amend section 86.1, a comfort letter was issued in 2001, and despite that, the tax status of these shareholders remains unresolved to this day.

There have been various attempts by successive federal governments to put this amendment through, but they've been unsuccessful, not because the provision was not supported—it was—but because of external events such as elections and other parliamentary priorities.

The passage of time has caused, as you might imagine, additional expense, and in some cases anxiety for these shareholders. I would just emphasize that they're individuals. So we're very pleased to have this amendment included in Bill C-48. Again, we're delighted to have it supported by all the parties represented here at committee today.

The main point we want to reiterate is how important it is to have this amendment passed without further delay. It assures fairness and certainty for your constituents; it ensures equal tax treatment in other provinces and territories with the Province of Quebec, which addressed this inequity in its own taxation act several years ago; and it eliminates unnecessary stress for all those Canadian taxpayers who have been waiting patiently for this matter to be resolved.

We do acknowledge the complex and lengthy history of the file, but we're grateful for the fact that the amendment is going forward. We'd be more than happy to respond to any questions.

Thank you.

● (0900)

The Chair: Thank you very much for your presentation.

We'll begin members' questions.

[*Translation*]

We will start with Mr. Caron.

Mr. Guy Caron (Rimouski-Neigette—Témiscouata—Les Basques, NDP): Thank you, Mr. Chair.

I thank the witnesses for being with us today.

This is a fairly complex subject. We have little time to discuss it. All the same, there are many amendments. Generally, the focus is on process issues. I will probably have a few questions to ask of Ms. Presseault about the process.

First of all, Mr. Kingissepp, I studied the issue of spin-offs. It's technical. As I am not a tax expert, I would like you to guide me in this matter.

I read the proposed amendment to section 86.1. I understand the intention behind the change. However, I have the impression that this could open the door to other loopholes, because shareholders are starting to be paid instead of having their dividends taxed.

Could you give me some insight on the possibility that the amendment could be used as another tax loophole?

[*English*]

Mr. Andrew Kingissepp: I don't see that as a concern. I think all that's really happening here is that where you're a shareholder in a foreign publicly listed U.S. company or, as I mentioned, an SEC registrant, you presently hold all of your investments in basically one piece of paper, and if they divide that up and put it into two pieces of paper, the gain that's in those shares, if there is one, is not escaping taxation. It's still there in the shares.

All the amendment allows you to do is to hold your investment through two pieces of paper, that being the distributing company and the spun-off company, instead of in one. But the gain is not escaping taxation. It's still there to be taxed when the shares are ultimately sold.

[*Translation*]

Mr. Guy Caron: The technique that you mentioned, could it be used inappropriately by a company to attempt to avoid a dividend escalation payment, for example?

[*English*]

Mr. Andrew Kingissepp: I don't think so, because basically you're talking about a situation where the requirements of the rule are such that it be widely held in the first place. Also, this treatment of spinoffs I think is widely accepted as neutral tax policy, so the tax law should not be imposing a draconian result on what amounts to just a change in the form in which the investment is held.

[*Translation*]

Mr. Guy Caron: Thank you very much.

Ms. Presseault, I very much enjoyed your presentation.

We've spoken a great deal about the fact that for nearly 10 years, no other bill had gone as far. We will probably have the opportunity to pass it.

We're coming to the process issue, which proposes that there should be regular bills that keep us up to date on letters of intent and court decisions. You suggest a period of 24 months.

Would it be so difficult, in your opinion, to establish a regular period that would allow us to stay up to date by using routine bills? What would be the obstacles?

Finally, what would you have to say, for example, to the Minister of State who came before us on Tuesday? He mentioned that the recommendations were interesting, that he had noted them, but there do not seem to be any further developments on this issue.

Ms. Carole Presseault: Thank you for your question.

I don't know if you have had the opportunity to ask this question of the public servants who appeared before you. That really is the same question that we have been asking ourselves, which is what are the obstacles to regularly introducing a bill?

Some obstacles are simply a matter of timing: the legislative calendar, for example. Some years, there were minority governments. At that time, it was difficult to get a space in the legislative timeline.

However, we have found that these arguments are not valid. Indeed, it is the role of government to introduce bills, and it is the role of Parliament to study and pass them. Therefore, we don't really understand the dilemma.

There has been a great deal of consultation. I mentioned the summit on tax simplification that we held in December, where former public officials were in attendance. The intention was always to regularly introduce technical amendments, as it is done in other parliaments, for example, the British Parliament.

Indeed, we asked ourselves the question: how to choose the moment to act? This led us to study a type of measure that supports a sunset mechanism.

The British Parliament has a procedure called the recess rule. This states that if a technical amendment is not introduced within a 12-month timeframe—in this case, we find it a bit excessive—the measure is withdrawn and reintroduced at a later date.

I took a brief look at the Westminster Parliament website. There are indeed technical bills included regularly in their legislative agenda.

● (0905)

The Chair: Thank you, Mr. Caron.

[*English*]

Ms. Glover, please.

Mrs. Shelly Glover (Saint Boniface, CPC): Thank you, Mr. Chair.

Welcome to the witnesses once again. It's nice to see all of you here again.

I'm going to ask you for a very brief comment on the following statement: would you agree that this technical tax bill is well supported and uncontroversial?

Mr. Kingissepp, do you want to start?

Mr. Andrew Kingissepp: The short answer would be yes. I think it's widely supported within the tax community.

Mrs. Shelly Glover: Ms. Presseault?

Ms. Carole Presseault: Yes, absolutely. Again this week we met with our volunteers, the members of our tax and fiscal policy committee, and that was the very clear message that we received from them.

Mrs. Shelly Glover: Thank you.

Mr. Vineberg.

Mr. Michael Vineberg: Widely supported, but in a bill of 1,000 pages I'm sure everyone who practises tax law has tens, if not hundreds, of suggestions for the future.

Mrs. Shelly Glover: Very good. It's in that vein, of course, that we heard from the Conservative government about trying to push forward more timely legislation, etc. It was commented on at the last meeting by another witness that there have been in fact nine occasions where we've attempted to bring technical tax changes forward in Parliament, and for whatever reason they were unsuccessful.

I do want to say we had officials here as well who said very clearly that technical tax packages will be released in a timely and regular manner. These will be released in smaller and more timely packages to create more certainty for taxpayers and tax professionals.

It's in that vein that I'd like to present a motion, Mr. Chair. I hope this motion might be considered when clause-by-clause commences, if we can ever get the bill out of the House of Commons. As you know, it's being delayed there for whatever reason. It is, as you have all said—as everyone who has appeared has said—uncontroversial, well supported, and there have been 10 years to review it to be prepared for this very day.

In that vein, I'm going to propose the following motion:

> That the Finance Department provide an annual update to the Finance Committee on the status of all outstanding technical tax changes in an effort to ensure regular and timely legislation as already committed by the Conservative government.

As I say, I hope that might be further discussed when it gets here, and I'm hoping that's soon.

Now that I've presented, I want to ask—

The Chair: Ms. Glover, is that a notice of motion?

Mrs. Shelly Glover: It's a notice motion, and I'll pass it to you so you have it, Madam Clerk.

I do want your opinion on what I've just said, if you can each give a brief response.

Mr. Andrew Kingissepp: I think that's a good idea. I think it would help to remain current, and it would help to avoid having any kind of backlog building up. It would help to keep it on the current agenda as a priority.

● (0910)

Ms. Carole Presseault: Thank you for that motion.

To a certain extent, I think that will go to helping parliamentarians perform the role of scrutiny they ought to be performing. Having regular reports is certainly one way of tracking progress.

Let me say that it doesn't go far enough, from our point of view, and I'm sure you expected that. It is one way, as I said, for parliamentarians on the finance committee.... This is where this kind of business belongs.

Mrs. Shelly Glover: Very good. Thank you.

Mr. Vineberg.

Mr. Michael Vineberg: It would be helpful, but I do have a concern with respect to a sunset clause. I'm certainly mindful of the difference between our form of government and the American form of government. But when I see the mess the Americans have gotten into with sequestration, creating something where everyone would do everything so that it would not occur and yet it does occur.... At least now, with comfort letters, one has the virtual certainty that the comfort letters will eventually be adopted.

If, for the sake of argument, a comfort letter would only be outstanding for two or three years unless legislation was brought in.... Many deals are now done in Canada based on comfort letters, knowing that eventually they will be given effect to, and generally with retroactive application. If there was a possibility, because of a sunset provision, that this might be *retiré*, I wonder if the cure could be worse than the disease. But anything that could expedite Finance's drafting of the legislation and parliamentary review would obviously be helpful.

Mrs. Shelly Glover: Thank you for your comments.

Thank you, Mr. Chair.

The Chair: Thank you, Ms. Glover.

Mr. Brison, please.

Hon. Scott Brison (Kings—Hants, Lib.): Thank you, Chair, and thanks to each of you for helping inform our deliberations here this morning.

I want to start with a question to Ms. Presseault. You just said that what Ms. Glover has proposed in her motion is a step in the right direction, but it doesn't go far enough.

Are you proposing some of the approaches as would be in place in Westminster, as an example? Help inform us as to ways we could potentially—and I'm not saying not to adopt Ms. Glover's motion, but to potentially strengthen it.

Ms. Carole Presseault: As I said in my remarks, we looked at ways, and we've had discussions and consultations with a number of stakeholders, including officials and parliamentarians, on how we move forward this discipline. The endgame for us is having a discipline of bringing forward tax legislation on a regular basis, on an annual basis or every two years. That's our objective.

Then we have to go to the issue of how do we get there. We looked at what happens in other countries, and this is where we were attracted to this notion of a sunset mechanism, which would trigger bringing forward legislation or the legislation is deemed to never have been proposed. When we say "never have been proposed", tax practitioners or tax professionals tell us that could create quite a mess.

But on the other side, there's quite a mess being created here. There's one measure contained in this bill that dates from 2002 and potentially could affect 18,000 taxpayers. It's with respect to donations. In this measure—and it went before the Federal Court of Appeal—the taxpayer was assessed, but the court established that the taxpayer had no appeal rights. It's a matter of fairness when this legislation is not brought forward. What the Federal Court of Appeal said in this matter is that there needs to be some form of retroactivity in terms of fiscal policy. That of course we accept. To be effective, there has to be some form of retroactivity. But the courts also said that doesn't take into account the length of time. The retroactivity assumes there is a limited amount of time.

Hon. Scott Brison: Mr. Vineberg, do you have...?

Mr. Michael Vineberg: I understand that it's Finance's policy, understandably, to ensure the presentation and the adoption of the budgets, generally speaking, in preference to technical measures. It's a question really of the parliamentary timetable. Obviously you can't have automatic adoption. Everything has to be adopted by Parliament.

Hon. Scott Brison: This is still a 1,000-page document that, even if it's not controversial, we are tasked with evaluating granularly in four days. Even if it's not controversial, do you think there's a risk that there's an erosion of our capacity to effectively enforce the power of the purse, as parliamentarians, in terms of the size of this? And in the general trend of omnibus legislation, do you fear that we're moving in the wrong direction, in terms of an erosion of the power of Parliament?

● (0915)

Mr. Michael Vineberg: Most of these provisions would have been presented previously. The proposed section 94 and section 94.1 measures have been before you and I think have been adopted in various iterations previously. There are relatively no significant provisions. Subsection 94(1) and section 94.1 are obviously significant provisions, but these have been studied before you I think at least three times previously, sir.

Hon. Scott Brison: Ms. Presseault.

Ms. Carole Presseault: I would tend to agree with you. I think the job, the mandate, of parliamentary committees is to scrutinize legislation and to ensure the legislation is the best possible. As stakeholders we can't scrutinize or go through a 1,000-page document. We have no one expert at that. It's difficult, on one hand, for parliamentarians to do their job and on the other hand for stakeholders to really do what we're supposed to be doing, which is giving you the technical value and technical input into the process. This is too big. This is just too big.

As uncontroversial as it is, there still is the basic principle of scrutiny.

The Chair: You have thirty seconds.

Hon. Scott Brison: What Ms. Glover is proposing could potentially help in this regard.

Ms. Carole Presseault: There's no doubt about that.

Hon. Scott Brison: Finally, just a comment. I find it curious that an organization representing accountants is pushing for tax simplification, but I commend you and your organization for that because I do think we need tax simplification and reform in Canada.

Thank you.

The Chair: Thank you, Mr. Brison.

Ms. McLeod, please.

Mrs. Cathy McLeod (Kamloops—Thompson—Cariboo, CPC): Thank you, Mr. Chair.

Certainly we all acknowledge that this is a significant document. As we go through our briefing binder, I see many dates that go back to 2006, 2008, 2010. Certainly parliamentarians have had opportunities over these many years and through previous bills to scrutinize.

We've certainly heard debate back and forth in terms of regular updates, and I think regular updates are very important. Certainly since 2004, Parliament has gone through some fairly extraordinary times in terms of minority governments, which it hadn't in the past.

Mr. Kingissepp, you had given us a really specific example of something that was important to your clients. I know it was a challenge to them. But what would have happened if that clause had simply sunsetted, gone away? What would those ramifications have been to your clients?

Mr. Andrew Kingissepp: Yes, it would have been a problem.

I tend to agree with the concern that Michael addressed. It's quite common in a situation like this to file on the basis of the proposed law when the written comfort is obtained from the government. In this particular situation, the spun-off company—just to answer your question and to give you a concrete example—was actually the subject of a takeover bid a few years later.

Had the original treatment of the spinoff been taxable, the cost basis for the Canadian shareholder would have been the fair market value at the time of the spinoff. But when the amendment applies, you get quite a different result. Instead, your existing cost basis is prorated. In the spun-off company, your adjusted cost base is lower.

In good faith, the shareholders have generally filed on the basis of having a lower cost base and paid more tax, in effect, on the subsequent sale—all in reliance on the amendment. If what had happened was that the amendment had later been yanked and pulled, then they would have been in a position of having overpaid their tax, and it might have been difficult, depending on when that happened, to have a remedy.

So when people plan based on an amendment and do their filings accordingly, and if, generally later, you yank that amendment away, it can create a bit of an administrative nightmare.

Mrs. Cathy McLeod: Mr. Vineberg, do you have any comments on that issue?

Mr. Michael Vineberg: I would share Andrew's view. Unfortunately, delay often has its cost to taxpayers. Most of the taxpayers we would act for who are waiting on comfort letters and the adoption thereof are waiting patiently.

I referred earlier this morning to clause 274. Let me share with you the example of a real person.

A high-tech whiz, an American, comes to Canada and creates several hundred jobs. Three years later, he sells 40% of the company.

By the way, many of the Canadian employees were given shares and made lots of money.

He goes back to the States and files his taxes. A year later, his auditors check and say, “You came to Canada with common shares, but you left with class A common shares. You have a tax problem.”

May I say that I didn't act for the gentleman at the time. This was 2006. Somebody gave him my name, and since 2006...sorry, 2007, I've been trying to expedite clause 274.

He goes back to the United States with considerable capital, but is forced to put almost every single dollar he has in a trust fund to support a letter of credit for his Canadian tax obligation—a Canadian tax obligation that's going to be wiped out by this.

He's a serial entrepreneur. He wants to go into new businesses. He has a new business. He would have wanted to maintain a significant equity position in this company, but he has been diluted on two occasions because he doesn't have any money.

Although we generally say that a comfort letter is a bar of gold, and that it will eventually have been adopted, he even asked me to see if he could find someone to whom he could assign his rights, who would take over his position, and he would give them 15% of the money that was coming back to him. He just needed access to his money.

Fortunately for him, and maybe for me, Bill C-48 was presented, and now he's eagerly—patiently, but eagerly—awaiting its adoption.

● (0920)

The Chair: Thank you.

Unfortunately, we are over time, Ms. McLeod.

We'll go to Ms. Nash, please.

Ms. Peggy Nash (Parkdale—High Park, NDP): Thank you, Mr. Chair.

Good morning to all the witnesses. Thank you for being here.

I'm sure Canadians have been eagerly awaiting these changes for I guess more than a decade, about 11 years now. Now we have a bill of 1,000 pages, and in all likelihood the changes themselves are not really controversial, because they're technical changes based on announcements already made by the government. I believe what is controversial is the fact that Canadians have had to wait more than a decade to get these changes made into law.

This has been raised with the witnesses, other witnesses who have been here, as well as with you. We also asked these questions to the Minister of State for Finance, and he said the reason these changes were not made on a more timely basis was that there were minority governments in place, and then the government, when it was a majority, was dealing with a recession—or I guess even before, when it was still a minority government—and later still dealing with the after-effects of the recession when it was a majority government.

Ms. Presseault, we have a Westminster parliamentary system, as does, obviously, the British government. Let me ask you how they would deal with a situation of minority government and recession if they had a sunset clause. Given that these changes are not controversial, in your mind are these things genuine concerns to the enactment of a sunset clause for technical tax changes?

Ms. Carole Presseault: We haven't looked at the evolution of technical tax legislation in Westminster according to the status of Parliament, whether it was minority, majority, or the rest. I think that question is moot. I think there is a legislative timetable, and there is priority, and it is up to government to put forward legislation, whether it is in a minority or a majority situation. It's up to Parliament to dispose of that legislation. I don't think it's a factor.

I understand that the parliamentary calender is busy, the weeks here are full, but that's the job at hand. We've heard that discussion for years now. We've been told by officials that the reason we can't bring forward legislation is that Parliament is in a minority situation. Bring it forward; it will give some comfort to taxpayers to know that the legislation is coming forward.

● (0925)

Ms. Peggy Nash: Given that all parties have indicated their support because these are technical changes, the issue of contention is the process around bringing forward these changes. For that reason, I don't understand why having a minority government would be seen as a rationale for delaying making these changes. Anyway, I'm not asking you to speculate.

One concern we also heard about a sunset clause—and there was discussion about an annual sunset clause, and I hear you proposing a two-year sunset clause, which gives a little more breathing room, and Mr. Vineberg raised it as well—is what if the unexpected happens? I'm trying to imagine if there's a way to have a sunset clause but with an escape valve. I raise that and wonder if that makes sense, or does that just negate the whole notion of a sunset clause? Do you think that is something that perhaps should be pursued? That there is a sunset clause: you don't bring these changes into law, you shouldn't have announced them, and therefore they will no longer be in force after two years, unless the sky falls.

The Chair: Please give us a brief response.

Ms. Carole Presseault: We would say 12 months, 24 months, and 48 months. For us it's the principle of it. Whatever parliamentarians may think is reasonable is certainly acceptable, as long as there's a principle that there is a trigger, on a regular basis, for legislation to be brought forward. Whatever might appear reasonable for parliamentarians would be fine for us.

The Chair: Thank you, Ms. Nash.

We'll go to Mr. Adler.

Mr. Mark Adler (York Centre, CPC): Thank you, Chair.

Before I begin my questioning, I would like to raise a point of order. Given that we've just been joined by Mr. Hickey, in the spirit of fairness, I would ask for unanimous consent from the committee to hear Mr. Hickey's presentation and then proceed with questions from the members.

The Chair: Do I have the committee's consent to go to Mr. Hickey's presentation?

Some hon. members: Agreed.

The Chair: Mr. Hickey, are you ready for your five-minute presentation?

Mr. Paul Hickey (Partner, Tax, KPMG): Yes, I am. Thank you very much, and my apologies for being a bit tardy. It was out of my control, unfortunately.

I'd like to start by thanking the committee for the invitation to attend these public hearings on this massive but extremely important piece of tax legislation.

I'm Paul Hickey, national tax partner at KPMG, based in Toronto. KPMG is an audit, tax, and advisory accounting firm. We have over 1,200 tax professionals who provide tax compliance services and tax planning advice to our clients in 33 offices across the country.

Bill C-48 contains over 900 pages of detailed tax fix-up amendments, literally affecting hundreds of sections of the Income Tax Act. These tax amendments have been sought by the CRA, the Department of Finance, and taxpayers alike. They're often intended to fix unintended tax consequences, a rule that might be too harsh, too lax, or whatever. They really are fix-up amendments.

In our communications with clients, we've dubbed Bill C-48 the big “catch-up” tax bill, as in lagging behind and trying to get back to the mark, as opposed to mustard, ketchup, and other condiments for a hot dog. It brings forward a buffet of enabling legislation to enact amendments dating back to 2002. There are general tax amendments going back to 2002, touching almost every corner of the Income Tax Act: charitable donation rules, restrictive covenants, non-resident trusts and foreign investment entities, REITs. There are also remaining 2010 federal budget measures. There are also 2010 and 2011 fix-up changes in the bill. So it's a massive piece of legislation. We applaud Parliament for finally dealing with this huge backlog of old tax business. We hope it will put an end to the problems that this 10-year delay has caused.

There are four problems I'd like to touch on. The first is the uncertainty that's been created for taxpayers and indeed the CRA. The implication of outstanding tax legislation being out there for so long is that taxpayers have been in a state of limbo for over 10 years. This is unprecedented in my 35-year career. Every year, taxpayers face a decision and a dilemma about how to file their tax returns. Do you file tax returns based on proposed legislation, press releases, and other things? Do you file your returns based on your best guess of what may pass or what may not pass? Or do you file your file your tax returns on the basis of enacted law and worry about squaring things up later when it's all passed?

I've already mentioned the challenges faced by taxpayers over the past 10 years. The CRA, of course, has a whole parallel set of problems on how to apply and assess tax returns and then go back and reassess if necessary based on enacted law.

Second, there are also tax administration issues, given that we're dealing with over 10 years' worth of backlog. Because the normal period when a tax return can be assessed is three to four years, many years of a taxpayer's return could well become statute-barred since 2002—while this legislation remained in this state of legal limbo. As a result, both taxpayers and the CRA could have lost their rights to assess proposed tax amendments, whether they be tightening or relieving in nature, depending on how the returns were filed and assessed by the CRA during the period of uncertainty.

The third problem I want to mention is the court system. The courts are also struggling to come to grips with this massive tax backlog. I want to point out, for example, the recent case of Michael Edwards v. The Queen. This was heard recently by the Federal Court of Appeal. This is because Bill C-48 contains a series of important amendments to the charitable donation rules related to the determination of an advantage and split receipting, among other things. These proposed amendments, for the most part, were introduced in 2002 and were generally aimed at leveraged charitable donation arrangements and buy low, donate high types of arrangements. They're still not law.

● (0930)

In Edwards, the court recently postponed the hearing of the taxpayer's appeal to the Tax Court of Canada on the basis that the CRA had disallowed the $10,000 donation he claimed. He actually paid a little over $3,000; the $10,000 donation was denied under a leveraged donation program.

The Chair: You have one minute, Mr. Hickey.

Mr. Paul Hickey: Thank you.

The court felt the postponement was justified on the grounds of fairness, as it should allow the taxpayer to challenge the CRA's assessment that the proposed amendments would not apply to this case.

To add to the mix here, it isn't just one taxpayer and a $10,000 donation at stake, but Edwards is a lead case for eight other appeals that are being held in abeyance. And in the court's words, “thousands of taxpayers are waiting in the wings”.

One other quick problem is a tax accounting problem. It goes to the integrity of companies' financial statements and the capital markets. You can't reflect these tax changes in your financial statements unless a bill has been introduced in Parliament or is passed into law. That creates a financial statement reporting problem.

I'll conclude my remarks. I have two asks for Parliament.

The first one is to ask Parliament to act decisively and to pass Bill C-48 to essentially clean the slate of this old pending legislation and to finally bring the Income Tax Act up to date. Taxpayers could then move on and focus on running their business, and the CRA could carry on administering and collecting tax in a more stable system.

The second ask is perhaps more of a plea than an ask. Could we please try to get onto a regular track of legislative amendments?

● (0935)

The Chair: Thank you very much for your presentation, Mr. Hickey.

We will resume questions from members with Mr. Adler, please.

Mr. Mark Adler: Thank you, Mr. Chair.

Thank you all for being here this morning.

Mr. Vineberg, are you a lawyer or an accountant?

Mr. Michael Vineberg: I'm a lawyer, sir, with Davies Ward Phillips & Vineberg.

Mr. Mark Adler: Thank you.

I was very interested in your comments about the serial entrepreneur, whom you gave the example of, who found himself in legal limbo; presumably he would want to pay tax, but he didn't know where, to whom, and how much. I found that story very interesting.

I listened with great interest to all of you, who were saying we need to introduce these kinds of amendments to bring the Income Tax Act up to current status on a more timely basis. We on this side have introduced technical amendments to the Income Tax Act a number of times that have been stalled by the other side. Even today, with our majority government, we're finding that members on the other side are still attempting to do whatever they can to delay the implementation of this act. So I find it passing strange; they're just crying crocodile tears when they claim we need to pass these things more quickly. It's all in their court right now. If they want to do it, we'll find unanimous consent to do it.

Getting on to my questions, I would like to begin with Mr. Hickey.

I want to talk a bit about REITs, real estate investment trusts. Under part 5 of the amendments, a consultation process was undertaken, and presumably a number of your clients participated in these consultations. Do you feel that consultation process was adequate and thorough enough?

Mr. Paul Hickey: The short answer is yes. We and our real estate clients participated in that discussion. I know Ryan, who couldn't make it today, was going to comment on that, and Lorne Shillinger from our firm, who's going to be here next week, will also be speaking to that. But in general, yes, we're very pleased with the ear that we and the industry obtained from the Department of Finance, and generally we are happy with the fix-up amendments that are included in this bill.

Mr. Mark Adler: Okay. And you're familiar with the specific changes that are being proposed?

Mr. Paul Hickey: I am, in broad terms.

Mr. Mark Adler: Okay. Because it does have some affect on REITs expanding into international markets. Could you comment on whether you think those changes are...?

Mr. Paul Hickey: I can't.

Mr. Mark Adler: You just don't know it well enough.

Mr. Paul Hickey: As I said, my partner Lorne Shillinger will be here in a week or so and will be happy to expand on that.

Mr. Mark Adler: Good stuff.

Mr. Hickey, could you walk me through the process of how one obtains a comfort letter, and a timetable of how long that would take?

Mr. Paul Hickey: Typically it occurs when a deal is in progress or is being contemplated and you want to do a deal a certain way and find that there's a technical roadblock to doing it that way, one that in policy terms really shouldn't be a problem but is. And because the dollars are so big and you're doing the deal or would like to do the deal.... I guess you could go around this roadblock, but it would be extremely costly.

The first step in a comfort letter is typically that you will contact the CRA to find out whether they are aware of this issue and have an administrative policy with respect to it. If they say no, the law is what the law is, then the next approach is to write a letter to Finance indicating that there is this technical anomaly and that there appears to be a completely unintended result, in tax policy terms, that frustrates an otherwise normal commercial transaction—

The Chair: You have about 30 seconds.

Mr. Paul Hickey: You write a letter asking whether the department would be willing to—

Mr. Mark Adler: How long does the process take from the time you obtained that letter? Would it be a week, a month, six months...?

● (0940)

Mr. Paul Hickey: It depends on the urgency, but....

Mr. Mark Adler: Okay. So it's prioritized; it's triaged.

And once it is obtained.... Is everything in abeyance until the letter is obtained, in terms of...? Say there's tax owing. Then what?

Mr. Paul Hickey: Probably, yes. You may be looking at other options, but.... You don't shut everything down, but you're—

Mr. Mark Adler: Yes, but this is clearly no way—by comfort letter—to run a tax collection system.

Mr. Paul Hickey: Are you talking, sir, about a comfort letter—

Mr. Mark Adler: You just can't be obtaining letters to....

Mr. Paul Hickey: Well, no, when you get a comfort letter, the hope is that it would be enacted at the next available opportunity. So you'd only get a six-month lag, but—

Mr. Mark Adler: [*Inaudible—Editor*]...comfort letters ad infinitum.

The Chair: Make just a quick response to that.

Mr. Paul Hickey: The technical amendments may still not be enough to solve the business problem—business issues that arise and are not really onside. This would solve a lot of other comfort letter issues, non-urgent ones.

The Chair: Thank you, Mr. Adler.

[*Translation*]

Mr. Côté, you have the floor.

Mr. Raymond Côté (Beauport—Limoilou, NDP): Thank you very much, Mr. Chair.

I thank all of the witnesses for being here today.

I thank Mr. Hickey in particular for having been able to meet us, in spite of the difficulties that he faced. I would like to thank you as well for your heartfelt plea. I hope that my colleague, Mr. Adler, didn't take it as crocodile tears. That would be very unfair of him.

Obviously, considering the conditions in which we must work and the timelines that we have to deal with, we must focus on some very precise matters.

I am turning to you, Ms. Presseault. I am particularly interested in the issue of restrictive covenants, defined in section 195 of Bill C-48. I had the privilege of being able to ask other witnesses about it in previous sessions.

In an article on tax strategy taken from the September-October 2005 issue of *CGA Magazine*, on the subject of restrictive covenants, one can read that these new rules lack clarity and are too complex to be actually used. It mentions unexpected traps and missed planning opportunities for taxpayers.

There have however been some changes since then. Do you still have the same opinion of restrictive covenants?

Ms. Carole Presseault: Thank you for your question, Mr. Côté.

Unfortunately, I am not the person who is best able to answer your question about section 56.4 of the Income Tax Act. You would have had to invite the author. However, I am sure that the experts at the table will be able to answer your question.

Mr. Raymond Côté: Can someone answer it?

[*English*]

Mr. Paul Hickey: Is the question whether it's difficult to plan, with the restrictive covenant rules in proposed section 56.4? Is that the question?

It's difficult to plan, I guess, with a lot of sections in the Income Tax Act, but I think that over 10 years and with the various amendments and so on, while the rules are still not perfect, people are comfortable with the way they are intended to operate and are able to work with them and plan with them. Everything can always be better, but I think this is adequate for the time being.

[*Translation*]

Mr. Raymond Côté: Perfect.

I'll come back to you, Ms. Presseault, because your group calculated the cost of the tax system's complexity for the economy. That was a very interesting piece of information. When one wishes to serve the public interest, this type of cost needs to be reduced, not to mention the complexity that this means in terms of planning and activities.

The number represented approximately 2% of Canada's gross domestic product. As for restrictive covenants, I won't get you to perform a long analysis. It can be noted, however, that there were many cases before the courts dealing with this matter. Did the 2% figure that you calculated include the costs of legal proceedings in which the government is involved?

● (0945)

Ms. Carole Presseault: The cost that accounts for 2% of GDP is a statistic that was mentioned during the Summit on Tax Simplification which we held last December. Some of our participants identified costs related to it. If I am not mistaken, it is a number that was presented by the Fraser Institute. It represents the overall cost. I assume, without having verified it—but I can get back to you on it—that it also includes government-related costs.

Finally, in our opinion, two objectives must be pursued. First of all, the government must collect taxes owed to it. The English language expression, "secure the tax base", is a sound one. After that, the objective is for taxpayers to understand that the system is fair and equitable for everyone. Therefore, that is the balance the legislation is seeking to achieve.

Mr. Raymond Côté: The president tells me that I have one minute left.

I wish to question the witnesses further about restrictive covenants. It might be difficult to do that in less than a minute.

I spoke to other witnesses about the issue of companies' eligible goodwill pricing of capital assets. Could someone comment on the fact that Bill C-48 seems to have deliberately and explicitly excluded the goodwill restrictive covenants?

Mr. Michael Vineberg: Thank you for your question.

[*English*]

I would just suggest, with respect to proposed section 56.4, that everyone, now that it's been through three or four iterations, knows what it stipulates.

The one area that perhaps could be looked at anew in the future is the problem—all of this derives from the Fortino situation—that if you have a company whose assets are being sold, and it's a family holding company and the non-compete is for only one of the members of it, the provisions really don't work that well. It's not the same as if the individual who gave it was also the principal shareholder. I would suggest that this is one area that in the future could be looked at.

[*Translation*]

Mr. Raymond Côté: Thank you.

The Chair: Thank you, Mr. Côté.

[*English*]

Mr. Van Kesteren, please.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Thank you, Mr. Chair, and thank you all for being here.

I want to wrap up some of our thoughts here. I'm going to give you my synopsis of this bill, and I want you to tell me if you think this is right. We're talking about the tax act itself, which is absolutely humongous. As we process those different changes we make, problems arise. These problems are identified by accountants and tax lawyers, by businesses and such. That is filtered down to MPs—MPs often get the message—but it's also filtered down to the people in the revenue department, our officials.

These are corrections. Mr. Vineberg, or it could have been you, Mr. Hickey, you talked about the uncertainty that exists. Last week I gave a personal case concerning my own business, where the government had a ruling that was in one of these limbo areas. They just arbitrarily came in, went to a number of us in the same business, and presented us with a huge tax bill. That can cripple a business if it's unstable or...nevertheless, it's something we can't have.

I tell my constituents that in this country we have the best system. There are no perfect systems, but this is as close as it gets, where we have many qualified MPs. But I would challenge anyone—with the possible exception of some really sharp accountants who have become MPs, for the most part a lot of this stuff is Greek to us, quite frankly. So we depend on you. We depend on great bureaucrats. The more I see of our bureaucrats, the more I'm impressed with the level of competence displayed. There are no partisans in bureaucrats. They couldn't care less whether it's a government that's.... They just do their job and they do it effectively.

You've all said—Mr. Hickey, it was in your recommendations as well—that this bill is something that absolutely must get passed. We all agree on that. I want to say, and I don't want to take the partisan side here, but it seems, even in this room, there is a willingness to pass this bill.

I challenge the opposition at this time, at least in this committee, to come out and say that we're prepared to pass this bill.

What can we say to our folks back home, the people who elect us, when they say, “Well, isn't it your job to analyze this? Isn't it your job to scrutinize this before you pass it?” Can you give us some insight into how we would answer that kind of question? You're not a politician. You're not the member of Parliament for wherever you reside, but if you were a fly on the wall and you heard that conversation, if you had the opportunity to jump in, what would you say?

Mr. Vineberg, I'll start with you, then Mr. Hickey, and Ms. Presseault, and we'll go right down the line.

● (0950)

Mr. Michael Vineberg: The Income Tax Act is certainly a very complex act. It's 2,882 pages, at least the most recent version. Presumably, there are other bills brought before you that are almost as complicated.

I think, fortunately, with respect to income tax, you have the byplay between the department and the outside tax community. These people say that these are basically non-controversial remedial issues and people don't have any significant problems. It's hard for people who try to do this on a daily basis to understand what's in every specific provision.

Mr. Dave Van Kesteren: There's an element of trust. Wouldn't you agree that in a free and open society, as we have, we have a very high level of trust? Don't you believe we have competent bureaucrats and we have people who...?

Mr. Hickey, go ahead.

Mr. Paul Hickey: Yes, we do, and there's a huge consultation process on many parts of this legislation that has had the Department of Finance consulting with taxpayers and tax lawyers and tax accountants to try to get it right.

To your constituents, I'd say yes. It is your job to get the thing passed. It's housekeeping; it may not be sexy, but it's important to have a good, clean house, so it'll operate smoothly.

It's been around for 10 years. It's nobody's fault that this has happened. It's kind of like a perfect storm: of change of governments, of other political urgencies, of minority governments —the government struggled in a minority situation, wanting to get its budget passed. I can understand all that, but my point now is, enough is enough. Let's get it done.

Mr. Dave Van Kesteren: Let's get it done.

Thanks.

The Chair: Thank you, Mr. Van Kesteren.

Mr. Rankin, go ahead, please.

Mr. Murray Rankin (Victoria, NDP): Thank you, Chair.

Thank you, witnesses.

I'd like to start my questioning with Mr. Vineberg.

Sir, you're a well-known expert on non-resident trusts, family trusts, and the like, and it would be very helpful if you might tell us a little bit—and I realize the difficulty with having only a couple of minutes is that the question may be too vast.

You did talk about non-resident beneficiaries and the reforms to clause 274 and section 94. I want to know to what extent you think Canadian taxpayers are using non-resident trusts for tax avoidance purposes. There are also the foreign investment entities, of course.

I'm asking you a couple of questions. Given the amazingly complex amendments to section 94 that are proposed in this bill, are you surprised that they are contained in a technical tax bill rather than in a stand-alone bill? Did they make it more confusing or less confusing?

There are a couple of questions embedded in there: on tax avoidance and on the complexity of the way in which these changes were made in this particular technical bill.

● (0955)

Mr. Michael Vineberg: Let me try to answer your second question first. The changes made to section 94 and subsection 94(1) are perhaps not technical measures or remedial measures per se; however, they have been brought before the House of Commons and the Senate on a number of occasions in the past.

With respect to tax avoidance—perhaps this is because I'm on this side of the table—I would suggest that subsection 94(1) goes very far, and, as you see in my submission, it perhaps goes too far in taxing some trusts that have a very ephemeral relationship to Canada. If a wealthy Canadian leaves $1 million—$100,000 to each of his 10 grandchildren, nine of whom live in the United Kingdom and one who lives in Canada—then Canada gets tax on the Canadian's portion. If, however, he leaves it in a single trust for them, the full $1 million is taxable in Canada.

Mr. Murray Rankin: If that trust is offshore, though—

Mr. Michael Vineberg: It's offshore, but there is only one of the ten owning a 10% interest who is in Canada, and yet the entire trust is taxable in Canada. As I mentioned, I've had to write letters to some clients saying if any of the grandchildren or great-grandchildren—everyone is now out of Canada—ever think of coming back to Canada, please tell me in advance and we'll have to try to do something, because the entire trust is going to be subject to Canadian tax. It's too late to deal with this in the present iteration, but perhaps it could be dealt with in a future technical amendment.

Mr. Murray Rankin: All right. Now I'd like to turn to Ms. Presseault, if I could.

When we had the benefit of the Canadian Institute of Chartered Accountants' presentation by Mr. Gabe Hayos, he suggested a two-part approach to this issue of simplification, which many of our colleagues have asked about as well. He first suggested creating an office of tax simplification, as was done in the U.K. in 2010, and he also suggested an expert panel or even a royal commission on tax reform to conduct a full-scale examination and make recommendations.

I wonder what your thoughts are on those recommendations.

Ms. Carole Presseault: Those are two great ideas. Those are ideas we've discussed with the Canadian Institute of Chartered Accountants, with Mr. Hayos and others, for a number of years. They are ideas that we brought forward to the committee, and we noted that the committee, in its report on the last pre-budget consultations, recommended having a royal commission on these, but I think it's a two-step process.

Where I would differ with their presentation this week is that I think we first have to have a public consultation process. We very much support the idea of a royal commission or an expert panel. Then, as a follow-up to that, there would be this idea of an office of tax simplification. I don't think the time is right now to be setting up a whole bureaucracy. It's an interesting example. It's an interesting process, but we also have benefited here in Canada from the paper burden reduction initiative and the red tape reduction reports. I think some of the more administrative compliance-related matters are being dealt with through that process. So first let's do a consultation process through a royal commission or an expert panel to define what we mean by tax simplification in Canada and start setting up the steps toward that.

Mr. Murray Rankin: I have only 30 seconds, so I have to pass.

The Chair: Thank you, Mr. Rankin.

Mr. Jean, go ahead, please.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Thank you, Mr. Chair.

Thank you to all the witnesses who have come here today. I know that your time is very precious, since you are professionals and you get to charge out by the hour, and obviously at the level of your expertise now, you must be able to charge out quite a bit per hour. That's because technical tax bills and bills such as this are very difficult to understand often. I can't imagine how difficult it would be to have a macro view, let alone a micro view of them.

I've heard quite a few things so far. I've heard that there has been a huge amount of consultation, that there has been adequate consultation, that we've been waiting for over 10 years for some of these enactments to come into play. I've heard "Get it done; it's been studied three times before."

Has anybody come forward with any objections to anything contained within this technical tax amendment bill? Have you heard anything from anyone saying, "Listen, slow down. Stop this. Don't let this pass?" Have you heard that?

● (1000)

Mr. Paul Hickey: No.

Mr. Brian Jean: Have any of you heard any reason to delay this?

Witnesses: No.

Mr. Brian Jean: Now I'd like to talk about some numbers. You've been talking about numbers: sections 94 and 94.1, clause 56.4, clause 274, and section 86.1, and there are some other numbers you've mentioned. I'd like to talk about the most important numbers: the numbers of taxpayers, Canadians and others, who have trusted the tax laws and who are waiting for this to come into play.

I'd like to talk about those numbers because I think those are the most important numbers that we can talk about here, and obviously I think most people recognize now that, in the House at least, this bill is being held up by the opposition NDP, and for no practical reason, which is what I've heard from you today.

How many Canadians right now are not receiving tax fairness as a result of the delays? How many would be affected? You mentioned 18,000 taxpayers on one particular section alone. How many Canadians would be prejudiced and not receive tax fairness as a result of this delay by the NDP?

Mr. Michael Vineberg: If you take a look at all of the measures —and I won't characterize it as fairness or not—there must be tens of thousands of Canadians who will be impacted by this bill.

Mr. Brian Jean: Positively impacted.

Mr. Michael Vineberg: I would say generally yes, because many of them are remedial measures, and at least taking them out of their uncertainty, and clarification.... There are many highly remedial measures.

Mr. Brian Jean: So it's fair to say that tens of thousands of Canadians are going to receive tax fairness once this legislation is passed.

Mr. Michael Vineberg: To the extent to which Canadians would ever think they're getting tax fairness—

Mr. Brian Jean: Well, it's an oxymoron—

Voices: Oh, oh!

Mr. Michael Vineberg: But yes, it would be regarded favourably, sir.

Mr. Brian Jean: Mr. Hickey?

Mr. Paul Hickey: Well, I would think that all Canadians would get tax fairness when we have an up-to-date and stable tax system, so that you know where you are with certainty. It's complex enough, but add a revolving door around it and it's—

Mr. Brian Jean: Would it be fair to say that at least 100,000 Canadians will be affected by this? You've said tens of thousands, but would it be fair to say that more than 100,000 Canadians would be affected by this technical tax bill not being brought into force, not being passed?

Mr. Hickey?

I saw Mr. Vineberg nod affirmatively, but the nods can't be picked up by the mikes.

Mr. Paul Hickey: Well, I can't speak to numbers. To go back to what I said, when the law stops spinning and coalesces, I think everybody will have a chance to be treated fairly.

Mr. Brian Jean: But you understand, of course, that I'm trying to guilt the NDP into passing the bill as quickly as possible through the most important number here, which is the number of voters you get —

Mr. Paul Hickey: I appreciate that. As you know, we have the CRA trying its best to administer the law on the basis of proposed amendments. They aren't always able to do it, but they've been trying to do that for 10 years, to strike a balance.

Mr. Brian Jean: Mr. Vineberg—

The Chair: You have one minute.

Mr. Brian Jean: —do you have anything else to add to that?

Mr. Michael Vineberg: No. I share the views that Paul expressed, sir.

Mr. Brian Jean: Carole, would you agree with that?

Ms. Carole Presseault: I would agree with that.

Mr. Brian Jean: Thanks.

Do you have anything to add, Andrew? I haven't heard from you in particular in relation to this and how many Canadians would be affected.

Mr. Andrew Kingissepp: Well, certainly I think a large number of Canadians would appreciate the amendments going through, but I have no idea, to be honest with you, of how many that is.

Mr. Brian Jean: Can you think of any practical reason why this piece of legislation should be delayed?

Mr. Andrew Kingissepp: No.

Ms. Carole Presseault: No.

Mr. Brian Jean: Thank you very much.

Those are my questions.

The Chair: Thank you very much, Mr. Jean.

I'm going to take the next Conservative round here, if that's okay.

Mr. Kingissepp, I really appreciated your presentation because you talked about dialoguing with the Department of Finance with respect to a certain issue that needs to be addressed. Obviously, that dialogue resulted in changes that are before us in terms of this bill.

As you expressed, there's frustration about the time from discussion to getting to this point, where we actually have it in legislation. But you do say "...I would encourage all parties to enact this proposed Legislation into law at the earliest opportunity", and then in your conclusion you reiterate "how important it is to have this amendment enacted without any further delay".

It seems to me there's a lot of discussion that we should have done this years ago, even though, as was mentioned at our last hearing, we had nine different versions of different sections of this bill presented to Parliament at various times, and then we also had draft legislation presented with respect to various parts of this bill at certain times. So these measures have been discussed a number of times.

But I do want to thank you, Mr. Kingissepp, for raising that.

Ms. Presseault, I do want to follow up with you, because in some of your responses to Mr. Brison, I'm not sure if I was exactly clear with respect to where you are.

Parts of this legislation were introduced in the past. The bill was introduced in November. Briefings were made available to all parliamentarians at the time. One reason the government introduced it and then let it sit for a while was to allow everybody to have a good look at the bill so that when it came to committee, hopefully, the committee could pass it expeditiously.

You seem to indicate that we're not spending enough time, and yet in your presentation you were very clear that you want us to pass this very quickly.

Can you just clarify exactly what you want? Do you want this committee to study this bill longer, perhaps into the fall, and maybe pass it then, or do you want this committee to pass this bill expeditiously?

● (1005)

Ms. Carole Presseault: If I answered yes to the question, I'd have the ire of every one of my members and would probably get fired by the end of the day.

No, absolutely, this bill needs to get passed. My concern doesn't result in the study of this bill. This bill has been studied; it's been consulted. My colleagues here, the witnesses, have also expressed that it's been extensively studied. Stakeholders have had an opportunity over the last decade to comment on the various provisions of this bill, and, yes, please, what's required is for it to be passed expeditiously.

The concern that I expressed was the idea that no one can really thoroughly scrutinize it—not that no one could really, that's not true. There should be the expectation that on a regular basis, every decade, a 1,000-page bill be presented to the committee. It's a matter of, as I mentioned, housekeeping and good administration to just bring legislation on a regular basis.

So, yes, certainly the call from our membership is to pass the bill as soon as possible, but the call going forward is for a mechanism to ensure that we don't get into the situation again.

The Chair: Mr. Vineberg has raised some very specific issues with respect to concerns that he may have, but as well pointed out some of the good things in this bill that he believes are addressed. But he's also recommending that we expeditiously pass this bill, and then he can continue dialogue with the department.

Do you or your members have any concerns with respect to any specific provisions of this bill, Ms. Presseault?

Ms. Carole Presseault: None that have come to our attention. It doesn't mean there has not been, but we've sought out the opinions of our members, and none have come to our attention, no.

The Chair: Okay. So this bill in its entirety is acceptable to your organization and should be passed as is.

Ms. Carole Presseault: Yes.

The Chair: Okay. I appreciate that.

Mr. Vineberg, further to your issue with respect to the trust, can you perhaps identify why the bill should be passed, and then you could continue your dialogue? Why do you see that as the approach, rather than opposing the bill?

Mr. Michael Vineberg: The issue I raised with respect to 94 does not involve that many taxpayers.

The Chair: How many would it involve?

Mr. Michael Vineberg: It would be very difficult to say. With all the non-resident trusts, I'm sure this is something that would be looked at. You'll never have perfect tax legislation, and I think the time has come for it to be passed.

Maybe, Mr. Chairman, the best indicia of this is that people in the tax community love to write articles, and commentaries, and tax notes ad nauseam. On Bill C-48, although it's 1,000 pages, I don't think there's been a single lengthy article that's been written on it. Normally, there'd be tens of articles written. I think that all these measures have been analyzed in the past, and obviously remedial measures can be brought to the attention of Parliament in the future.

The Chair: Okay, I appreciate that very much.

Colleagues, the bells are ringing, and I'm not sure what the vote is on. Orders of the day?

I have two colleagues who are on the list still, but I need unanimous consent to continue while the bells are ringing. Do I have that consent to allow those two members to finish?

Some hon. members: Agreed.

The Chair: Okay, thank you.

I have Monsieur Caron and then Mr. Hoback.

[*Translation*]

Mr. Caron, please.

● (1010)

Mr. Guy Caron: Thank you very much, Mr. Chair.

I will start with you, Mr. Hickey, because I didn't have the chance to speak with you, or to hear your presentation.

In its technical aspects, it is understood by all that the bill is not controversial. There is however another issue to take into account. Questions were asked about the process.

[*English*]

I'll say it in English. Before you came in there was a notice of motion presented to us by the Conservative side that the finance department provide an annual update to the finance committee on the status of all outstanding technical tax changes in an effort to ensure regular and timely legislation, as already committed to by the Conservative government.

You might not know about process in government, but this actually is only applied until prorogation. It won't survive the next prorogation. Basically, what we have here is something that's only good until we have a new Parliament.

This being said, we have a problem with the process right now, and things being as they are with the finance committee, this is likely the only opportunity we have to discuss the process surrounding the presentation of those technical tax bills. The last one was over 10 years ago. We don't know when the next one will be coming. I understand there are about 200 changes left to implement or to present in the bill.

Mr. Hickey, do you think we would be remiss in our role as parliamentarians to miss this opportunity to address this sensitive question of process, and how the changes are represented in a timely fashion?

Mr. Paul Hickey: That's a very good question. Process is extremely important. Most of this bill has been through all kinds of process in the past. In fact, a large portion of the bill, probably half of it, had actually been passed by the House of Commons, through the Senate, and then died on the order paper when the election was called.

I'm sure there is a backlog of amendments by the Department of Finance, but on December 20, 2012, I think, there was a 2012 technical fix-up bill presented and put forward to the committee. It affected quite a few sections. It's on top of this. The government and the Department of Finance are already doing this. The Auditor General in 2009, in response to the delay, was looking at the legislative process and made some recommendations on where the CRA and Finance could improve.

Mr. Guy Caron: I understand that.

It's clear to me that back in the 1980s, the 1990s, there was a commitment from government to have annual, or at least every two years, presentations of these bills. Nothing has been done in a consistent fashion. Right now is our time to do something about it. The government side wants us to deal with this as quickly as possible. Let's forget about the whole process; these little changes are important.

We have an opportunity right now. If we pass this bill that quickly, believe me, we won't go back to the changes that are necessary in the process.

[*Translation*]

Ms. Presseault told us that the suggestion would be to have regular bills every 24 months. And so, if such a specific matter had to be dealt with, the government would have an obligation to introduce it. To summarize, if we do nothing, are we not in breach of our obligation, as parliamentarians, to deal appropriately with the issue?

[*English*]

Mr. Paul Hickey: I'm sorry, you're saying to require Parliament to introduce a bill every 12 months or 24 months?

Mr. Guy Caron: That's one suggestion by Madame Presseault. It might be something else, but we need to do something to ensure a timely and regular process.

Mr. Paul Hickey: I guess that's part of my plea. I think the government has everything. As I said, there are technical fix-ups for 2010, 2011, and 2012. The process from the bureaucracy is there. I guess a technical bill doesn't carry a lot of votes and voting power and excitement in the ridings, but it's an important part of maintaining a stable, world-class tax system. I think we should come up with something that puts us on track for these issues to be passed. They are technical—it shouldn't be a big deal.

The Chair: Thank you.

We'll have a final round with Mr. Hoback, and then, colleagues, please take a look at what the clerk has distributed to you, the subcommittee report. I'd like to adopt it after Mr. Hoback's round.

Mr. Hoback.

● (1015)

Mr. Randy Hoback (Prince Albert, CPC): Thank you, Chair.

Thank you, witnesses, for being here this morning.

Chair, I find it very interesting when we start bringing in different witnesses. We ask the same questions, we get the same answers, and it's starting to get very repetitive in what we're hearing around the table here.

I know our colleague from the NDP is concerned about the process, but this study here is actually to look at the tax bill and ensure that we get that put forward. If the NDP member has concerns with the process, he may remember that our colleague here this morning put forward an idea on the process to ensure that this type of review happens in a more orderly fashion.

So, Chair, I really don't have any more questions for these witnesses. As I said, these questions have been asked two, three, four times before. The answers, depending on who the witness is, are all the same. As far as I'm concerned, Chair, the process should be getting on to voting on this and moving it forward and letting these fine people go back to work and do their jobs properly.

The Chair: All right. Thank you, Mr. Hoback.

On behalf of the committee, I want to thank all of our witnesses here today for their excellent presentations responding to our questions. We appreciate your input into this process very much.

Colleagues, you do have before you the draft report of the Sixth Report from the Subcommittee on Agenda and Procedure.

Can I get someone to move this?

Ms. McLeod: So moved.

The Chair: Thank you.

(Motion agreed to)

The Chair: That's unanimous. Thank you very much.

If there's nothing further, I will see you at the vote.

The meeting is adjourned.