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Chair

The Honourable Wayne Easter

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● (1105)

[*English*]

The Chair (Hon. Wayne Easter (Malpeque, Lib.)): I call the meeting to order.

This is our first full committee meeting in new digs. Welcome to everyone. Pursuant to the order of reference of Monday, October 15 of last year, we are here to discuss Bill C-82, an act to implement a multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting.

To start on this bill, we have with us, from the Department of Finance, Stephanie Smith, Senior Chief, Tax Legislation Division; and Trevor McGowan, Director General, Tax Legislation Division.

Welcome to both of you. The floor is yours.

Mr. Trevor McGowan (Director General, Tax Legislation Division, Tax Policy Branch, Department of Finance): Thank you, Chair.

We appreciate the opportunity to appear before the committee today to speak about Bill C-82, an act to implement a multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting. This convention is generally referred to as the MLI.

The substantive provisions of the MLI are based on the results of the OECD/G20 base erosion and profit shifting project, the BEPS project. This includes the final report on BEPS action 6, entitled “Preventing the Granting of Treaty Benefits in Inappropriate Circumstances”, and the final report on BEPS action 14, entitled “Making Dispute Resolution Mechanisms More Effective”.

The OECD and G20 BEPS project was initiated in 2013 with the objective of developing a coordinated approach to addressing concerns over BEPS. The project now involves not only OECD and G20 countries but also more than 120 jurisdictions known collectively as the “inclusive framework” on BEPS. BEPS is a term used to describe aggressive, but nonetheless legal, tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift income to low- or no-tax jurisdictions. Countering such strategies requires a coordinated international response. The MLI is an important component of that coordinated international response.

Over 100 jurisdictions participated in the negotiations that led to the conclusion of the multilateral instrument. To date, 87 jurisdictions have signed the MLI. Bill C-82 would bring the MLI into force with respect to Canada and allow Canada to swiftly modify the application of many of our bilateral tax treaties to include BEPS countermeasures without the need for separate bilateral negotiations.

The MLI represents a big step forward in strengthening international tax integrity and tax fairness. Specifically, the MLI would allow Canada to address treaty abuse in accordance with the minimum standards established by the OECD/G20 base erosion and profit shifting project. This includes the adoption of a new treaty preamble, which states that the object of a tax treaty is not to create opportunities for tax avoidance, and also a principal purpose test, which is a substantive anti-abuse rule designed to counter treaty abuse.

ln addition, the MLI would allow Canada to incorporate provisions in its tax treaties dealing with the resolution of tax disputes that are in accordance with the minimum standards and to adopt mandatory binding arbitration with many of our key treaty partners. Mandatory binding arbitration is a mechanism that obligates the parties to a tax treaty to submit unresolved cases to an independent and impartial decision-maker—an arbitration panel. The decision reached by the arbitration panel is binding on the parties and resolves the case.

Chair, this concludes my introductory remarks. My colleague and I would be pleased to answer any questions the committee may have.

The Chair: Okay. Thank you both for being here.

We'll start round one with Ms. Rudd for seven minutes.

Ms. Kim Rudd (Northumberland—Peterborough South, Lib.): Thank you very much, Mr. Chair.

Thank you for coming. I have a few questions on the bill that I'm hoping you'll be able to answer.

First, the bill states that the MLI convention “shall be open for signature” as of mid-December 2016. What's the process for Canada to bring this treaty into effect?

Ms. Stephanie Smith (Senior Chief, Tax Legislation Division, Tax Policy Branch, Department of Finance): The bill was signed in June 2017. Following that, the government tabled this implementing bill, Bill C-82, to enact the MLI into Canadian domestic legislation. Following royal assent to this bill, Canada would be in a position to notify the depositary of this convention that it has completed all necessary procedures to implement the bill in domestic law. Then the multilateral instrument would be in force, in respect of Canada, a three-month period after such notification.

● (1110)

Ms. Kim Rudd: To follow up with a little more detail about process, the bill also states that the treaty will enter into force after the deposit of five instruments for ratification, acceptance or approval. How many instruments of ratification have been deposited by Canada thus far?

Ms. Stephanie Smith: Canada has not deposited its instrument of ratification yet. However, 19 other signatories to the multilateral instrument have deposited their instruments of ratification. The first five deposited them in the first half of last year. The treaty itself entered into force on July 1, 2018. However, even though the multilateral treaty is in force, it has no effect in respect of any of Canada's tax treaties until such time as Canada ratifies, and it is entered into force and effect.

Ms. Kim Rudd: I'm just trying to be clear here. At what step in the process is Canada? Other countries have deposited their instruments. When would we deposit our ratification notice?

Ms. Stephanie Smith: Canada would deposit its ratification notice after this bill receives royal assent. The Minister of Foreign Affairs would then seek an order in council to authorize her to send a notification to the depositary in respect of Canada's ratification of the instrument. Assuming that this bill was to receive royal assent before the end of this session, I would expect that such notification would be sent this summer.

Ms. Kim Rudd: What's our next opportunity to have this come into force? When you say it could be in the summer, are there deadlines, specific openings where this is done?

Ms. Stephanie Smith: There are no specified times within which you have to deposit your notice of ratification. Obviously the earlier the notice of ratification is deposited, the earlier the entry into force. Then the next step is the entry into effect of this instrument. Because of the way this multilateral instrument works, there is a bit of a lag between a deposit of ratification and its entry into effect. If we were to deposit our notice of ratification any time before the end of September 2018, generally speaking the MLI would have effect with respect to Canada starting January 1, 2019.

To the extent that we deposit our notice of ratification after September 30, 2018, there would generally be a year's delay in its entry into effect. Some provisions would have effect midway through 2019, but with respect to many of the provisions, there would be a delayed application until January 1, 2020.

Ms. Kim Rudd: I'd like some clarification. You're talking about September 2018, which is already past. Did you mean 2019?

Ms. Stephanie Smith: My apologies. I did mean September 2019.

Ms. Kim Rudd: Okay. I wondered about that. I just thought we needed to get that on record. We missed a big window there, then.

Ms. Stephanie Smith: Yes, I'm sorry.

Ms. Kim Rudd: Okay.

So we're really clear about this for the record, could you clarify what those timelines are and what our opportunity is? I'd really appreciate it.

Ms. Stephanie Smith: If we were to deposit our instrument of ratification prior to September 30, 2019, then the convention would come into force at the beginning of the three months after that date. So depending on the date we do it, it would be late 2019 or January 1, 2020. As long as we get an entry into force by January 1, 2020 at the latest, it would enter into effect on the same day. But if we go beyond the September 30 date, we would have an entry into force three months after the deposit of the notice of ratification. However, the entry into effect would generally be delayed by a full calendar year, to January 1, 2021.

● (1115)

Ms. Kim Rudd: Thank you very much.

Ms. Stephanie Smith: My apologies for the confusion.

Ms. Kim Rudd: I know there were a lot of dates, so I really appreciate that.

The Chair: Thanks to both of you.

Before I turn to Mr. Kmiec, what's the difference between "entry into force" and "entry into effect"?

Ms. Stephanie Smith: Typically, conventions, and specifically tax conventions, have a differing entry into force and entry into effect. It would be in force in respect of Canada; however, it would have no effect on any of our tax treaties, on any transactions that taxpayers undertook, until the date of entry into effect.

There are two different dates of entry into effect depending on the particular tax that would be impacted by the convention. Most of those that would be impacted—or many of them—are withholding taxes. That is where you get the potential full calendar year delay, because it enters into effect on January 1 of a calendar year. That's generally to allow companies, businesses, to adjust withholding systems, etc., to reflect changes in the treaty.

The Chair: Thank you.

Mr. Kmiec.

Mr. Tom Kmiec (Calgary Shepard, CPC): I think we'll all agree that it's a scintillating subject.

Thanks for coming here to explain this bill. I think I called it "a tax treaty for tax treaties" in the House during debate. I'm not a tax lawyer or a tax accountant, so it's all very foreign to me.

One thing here I would ask the analysts from the Library of Parliament to note with regard to the bilateral tax treaties to which the convention applies is to make sure that it's clear that it says "South Korea", and not "Korea". It just says "Korea" right now. I'm sure we don't have a tax treaty with North Korea. It would be nice to differentiate between the two. I'm nitpicking, but I think it's important.

Ms. Smith, is the United States a party to this agreement?

Ms. Stephanie Smith: The United States is not a party to this agreement. While it participated in the early days of the negotiation of this instrument, towards the end of the negotiations it indicated that it did not intend to become a signatory to this convention.

Mr. Tom Kmiec: What types of effects will that have? Mexico is a party to this. Also, we have the USMCA that was negotiated as well.

What types of effects could it have for companies operating in all three jurisdictions when only two of the jurisdictions are presumably seeking to ratify it and put this treaty into force, whereas the United States, the bigger one, the bigger partner in the USMCA, is not?

Ms. Stephanie Smith: Generally, the USMCA itself would not be impacted by anything in this tax treaty. Generally speaking, the USMCA provides that, to the extent that there's a tax treaty in place, the tax treaty should apply, as opposed to the USMCA.

The fact that the United States is not going to sign this convention should not have any significant impact. That is because the U.S. already has in its bilateral tax treaties with all of its partners the main provisions contained in this multilateral convention. For example, on the treaty anti-abuse rule, the United States for some time has had a policy of including a treaty anti-abuse rule in its tax treaties, which is generally referred to as a limitation on benefit test. That test is included in the Canada-U.S. tax treaty. It is also included in the U.S.-Mexico treaty. My understanding is that it is in all of the U.S. treaties with the exception of two, and I think it has already renegotiated those treaties, although they have not yet been ratified, and in one case, one may not be signed.

We don't think there will be significant impact, because they already incorporate many of these anti-abuse rules in their treaties.

Mr. Tom Kmiec: Okay.

The government has tabled Bill S-6 from the Senate. It's a tax treaty with Madagascar. Is Madagascar a party to this multilateral instrument? Will that then fall into this if this is put into effect, into force? Will this apply to that treaty as well?

● (1120)

Ms. Stephanie Smith: Madagascar is not a signatory to this multilateral convention and, to my knowledge, has not indicated its intention to sign the treaty. As a result, the treaty with Madagascar, if ratified, would not be covered by this instrument.

Mr. Tom Kmiec: You mentioned that there's the core body of it, and there are a bunch of optional components to it. In my office we were trying to figure out which ones Canada has opted into and which ones we have not.

Can you give me a list of the optional provisions that we have opted into by article name?

Ms. Stephanie Smith: I think we had a briefing binder that was distributed. In the news release the government issued when the notice of ways and means was tabled, the backgrounder also set out which provisions Canada proposes to opt into at the time of ratification.

That would be opting into article 4 in respect of dual resident entities; article 5 in respect of application of methods for elimination of double taxation; article 6, purpose of a covered tax agreement; article 7, prevention of treaty abuse; article 8, dividend transfer transactions; article 9, capital gains from alienation of shares or interest of entities deriving their value principally from removable property—

Mr. Tom Kmiec: Can I just stop you right there for a moment?

What about article 3 on transparent entities? What's the reason for Canada not opting into it?

Ms. Stephanie Smith: Currently, Canada has not proposed to opt into article 3. Canada has a reservation in respect of the OECD model tax convention where such a provision is also contained. It was developed, generally speaking, by OECD member countries. It extends to include situations where there may be a transparent entity in a third jurisdiction.

In Canada's view, the provision would be better applied and could avoid some unintended effects if it applied only with respect to entities in the two contracting states. We have found, through our experience with the United States, that Canada has the most instances of transparent entities being relevant to transactions. To the extent there is an issue with a particular jurisdiction, it may be desirable to bilaterally negotiate such a provision for the situations particular to the two jurisdictions.

Mr. Tom Kmiec: Would the effect be that Canada wouldn't have to negotiate with each individual country based on activities such as financial transactions that require it? Can you help me understand why we're not participating? Is it a better method through the OECD?

Ms. Stephanie Smith: No, the provision that is in the multilateral instrument is a provision that would allow for treaty benefits in certain circumstances where a transparent entity exists. It would clarify those situations. It would also provide for benefits when that transparent entity is in a third jurisdiction, not in one of the two contracting states. In our view, that can lead, in certain circumstances, to an inappropriate grant of treaty benefits as a result of this third jurisdiction having a transparent entity. Our view is that it should be limited to entities in one of the two contracting states.

To my knowledge, the CRA has not had significant issues with transparent entities, except in the context of the United States. We also don't see that it's a situation where there is a strong need for such a provision. To the extent there were a need for such a provision, we would have to bilaterally negotiate with the other state to include that provision.

The Chair: We're out of time.

There will be other rounds, Tom.

I wonder if you might finish your articles. You mentioned article 4, 5, 6, 7, 8, and 9. What other ones are we enacting? You were up to 9, just so everyone is clear.

Then we'll go to Mr. Julian.

● (1125)

Ms. Stephanie Smith: We have article 16, mutual agreement procedure, and article 17, corresponding adjustments. We have also opted into part 6 that includes articles 18 to 26. That is mandatory binding arbitration.

The Chair: Thank you.

That's the list.

Mr. Julian.

Mr. Peter Julian (New Westminster—Burnaby, NDP): Thank you very much for coming here today.

This is a very important subject, of course, because Canadians lose billions of dollars a year to overseas tax havens. Some estimates are $3 billion or $4 billion, with some as high as $40 billion a year. That's money that could go to increase seniors' pensions, to provide for housing, or to provide supports for our health care system and our education system. This is a very important discussion that we're having here, because Canadians lose so much from the widespread use of tax havens.

I appreciate your coming here today so that we can start going through this bill.

My first question is in terms of the ministry itself. What is your estimate of the amount of money that is invested through offshore tax havens now and the amount of money that we lose? Estimates have varied.

Mr. Trevor McGowan: I'm sorry, but we don't have that information with us right now.

Mr. Peter Julian: Perhaps you could provide it to the committee. The Canada Revenue Agency has estimated that there are $250 billion in offshore tax havens, so I'd be interested in knowing. Perhaps you could get back to the committee about what your figures are. Of course the PBO is doubling down on this too, so we should get some estimates over the spring.

In terms of the number of tax treaties to which the convention applies, it is 75, if that's correct. How many tax treaties does Canada have, and which tax treaties are excluded from this convention?

As my colleague mentioned, the United States is not there. I didn't see Switzerland, which is a notorious tax haven, of course. Do you have a list of the tax havens with which we have agreements and to which this convention does not apply? I'm just looking for a ballpark number. It seems to me that some of the most notorious tax havens are not included.

Mr. Trevor McGowan: As my colleague is looking it up, I would say that we of course have the information on which countries Canada has tax treaties with, and also on which countries are involved in the MLI.

With regard to the status of a country being, I think the term was, a “tax haven”, that's not a specific tax term. Some countries have what are known as blacklists. They have lists of countries they consider to be tax havens. There's a bit of vagueness. I don't know if there's a list of countries that definitively qualify or don't, and so it's difficult to answer that aspect of the question.

Mr. Peter Julian: The question I'm asking is which countries or entities with which we have tax treaties does this convention not apply to? Very clearly, as you mentioned, there is the United States. I see Switzerland. What other countries or entities are excluded? If we're looking at the Cook Islands or the Cayman Islands, of course, they're part of broader entities, but they're both notorious tax havens. Which tax treaties do we have to which this convention does not apply?

Ms. Stephanie Smith: Currently, the way the convention works is that on signature, countries deposit a provisional list of tax treaties to which they would like this convention to apply. On signature, Canada provisionally listed 75 tax treaties. It is expected that on ratification this number would increase to 84, because the basis on which the list was developed was that it would include all countries participating in the inclusive framework on BEPS, namely the countries that are engaged in this work and have therefore indicated a willingness and a desire to sign this convention. Also, the countries that are part of the inclusive framework are those that have been identified by peer countries as being at risk for base erosion and profit shifting.

The countries that have not been covered are Switzerland and Germany. The reason for these two not being covered is that on the day Canada signed the multilateral convention, the government also simultaneously announced that bilateral negotiations had commenced with the two countries. The expectation is that these two tax treaties will be updated on a bilateral basis.

● (1130)

Mr. Peter Julian: Could you read the others? We have 93 tax treaties, right?

Ms. Stephanie Smith: We have 93 tax treaties.

Mr. Peter Julian: Could you read for us the other 16 that are not included?

Ms. Stephanie Smith: I will give you the other 16, and I'll also indicate the ones that we would expect would be covered on final ratification.

Those not currently covered but that we would expect would be covered on ratification in the final notification would include Algeria, Armenia, Ivory Coast, Kuwait, Oman, Papua New Guinea, Peru, Trinidad and Tobago and the United Arab Emirates. Those are nine additional countries that it would be proposed to cover. Those not covered would be the following nine: Equador, Germany, Guyana, Kyrgyzstan, Switzerland, Taiwan, the United States, Uzbekistan and Venezuela.

Mr. Peter Julian: What status, then, do we have with tax havens like the Cayman Islands and the Cook Islands? How would you categorize those tax agreements?

Ms. Stephanie Smith: We do not have tax treaties with the Cayman Islands or the Cook Islands. We have tax information exchange agreements with those two jurisdictions. Because tax information and exchange agreements deal only with exchange of information and this treaty itself deals with entitlement to treaty benefits, they are not within the scope of agreements that can be covered by this multilateral convention.

Mr. Peter Julian: They would be excluded from this. This doesn't change materially our relationship and the current use of the Cayman Islands, for example, as an overseas tax haven.

Ms. Stephanie Smith: It would have no impact on the Cayman Islands. That's correct.

The Chair: We'll likely have time for another round, Mr. Julian.

Mr. Fragiskatos.

Mr. Peter Fragiskatos (London North Centre, Lib.): Thank you very much, Mr. Chair, and thank you to the officials for being here this morning on what it is truly a technical matter, but a very important one.

Mr. Julian has cited a number now. I believe he said it was $240 billion to $250 billion. I can't remember exactly. It's one of the two, Mr. Chair. I think the implication is that this is what the Canadian government does not see on an annual basis because of tax avoidance. That number actually comes from the OECD and is an estimate on the global situation, on what all governments are missing out on when it comes to tax avoidance. I think that's important for the record to reflect and—

Mr. Peter Julian: On a point of order, Mr. Chair—

The Chair: It's probably a point of information, but go ahead.

Mr. Peter Julian: —this comes from the Canada Revenue Agency.

Mr. Peter Fragiskatos: I wasn't—

Mr. Peter Julian: It's the last report that was published at the end of June. It's a Canadian figure and it comes from Canada—

Mr. Peter Fragiskatos: I'm not saying you're misleading—

Mr. Peter Julian: —for Canada.

Mr. Peter Fragiskatos: I'm saying that the substance of your comments could imply what I said. That point of information on the OECD comes from the Library of Parliament, which we're very fortunate to have with us and briefing us on these issues, Mr. Chair.

First of all, if I could, I wanted to go over with you this entire process. It unfolded through the OECD. It's multilateral in nature, obviously. Could you speak about how that makes things more efficient? I know that this is a very general question, and perhaps a simple one, but I'm thinking about this issue from the perspective of the Canadian taxpayer who might not want to delve into the technicalities. From an efficiency perspective, I think they're well-served here, but I would love to hear your view.

Ms. Stephanie Smith: When the OECD and G20 launched this BEPS process and some of the outcomes of the process required changes to tax treaties, it was recognized that for all states to include those in their tax treaties would be a very lengthy and time-consuming process, due to the requirement of bilateral negotiations. The process of having a multilateral convention was explored, which would update bilateral tax treaties to therefore streamline the process to include and provide updates to tax treaties.

I do think, especially for a country like Canada with a large treaty network, that it is a very efficient process to be able to update a number of treaties with the negotiation and signing of one instrument.

● (1135)

Mr. Peter Fragiskatos: Thank you very much.

Indeed, that is what it appears to be. When countries pool their resources and work together in this way, I think we have a more efficient process that serves the citizen in a much better and effective way.

Again, thinking from a constituent's perspective—and I note here the press release from back in June of 2018 that speaks about this particular bill. It does say in the second paragraph that, "The Government of Canada has taken the next step in the fight against aggressive international tax avoidance." Could you, from your perspective, tell us—and I want to separate the essentials from the accidentals, if you like—what is the key thing in this bill that gets us to that place in the fight against tax avoidance internationally?

Ms. Stephanie Smith: In my view, the two key aspects in this bill and in this convention are articles 6 and 7. Those are two of the rules that go towards preventing the abuse of tax treaties.

I think article 6 will be very important in helping our courts interpret our tax treaties and this anti-abuse rule, because it makes a clear statement endorsed by both treaty partners that, while the common intention is to eliminate double taxation, it's not to create opportunities for non-taxation or reduced taxation.

Article 7 itself contains the anti-abuse rule, and through Canada's choice and the choice of our treaty partners, all of the tax treaties that will be covered by the MLI will be updated to include a principal purpose test. The test provides that a treaty benefit shall not be granted if it's reasonable to conclude that the obtaining of the benefit was one of the principal purposes of an arrangement or transaction, unless the benefit is in accordance with the object and purpose of the relevant provisions of the convention. It provides protection against taxpayers using bilateral tax treaties to obtain benefits that were not intended for those particular taxpayers.

Mr. Peter Fragiskatos: Good.

I think my constituents like to hear the words "protection" and "taxpayer" put together, so that's very helpful.

I have one final question for you relating to mandatory binding arbitration. Would the Canada Revenue Agency need additional funding to meet the obligations set out in the arbitration provisions of the convention, in your view?

Ms. Stephanie Smith: Our understanding is that, no, they will be able to manage such a process within their existing budget. They already have responsibility under all of these tax treaties to engage in a mutual agreement procedure, and the binding arbitration is just a final point to ensure that there is a decision so that the taxpayer can be relieved from double taxation.

Mr. Peter Fragiskatos: What would be the implications if this bill didn't exist, to sum everything up? From an efficiency perspective—I go back to the point that I started with.

Ms. Stephanie Smith: From an efficiency process, it would require a bilateral update of our tax treaties. Canada is a member of the OECD and the G20 and has made a commitment at the highest political levels that it endorses the outcome of the OECD/G20 project, and that it will implement the minimum standards that were established during that process. Signing the MLI allows us to meet the minimum standards with respect to the treaty-based provisions.

● (1140)

Mr. Peter Fragiskatos: Thank you.

The Chair: Mr. Richards.

Mr. Blake Richards (Banff—Airdrie, CPC): The government actually made some changes to the optional provisions it was having reservations about. I'm wondering if you could walk us through the changes that were made there and the reasons those changes were made.

Ms. Stephanie Smith: The negotiation of the MLI was concluded in November, 2016, and it was open for signature afterwards. Thereafter, a first signing ceremony of the multilateral convention was announced for June 2017.

The government had indicated a desire to be among the first group of countries to sign this instrument. In preparing to sign, the department undertook an analysis of the provisions and of the relative benefits of the provisions and was aware that a provisional indication had to be listed in June 2017, but that it could be updated at a later date.

The government took a very prudent approach on signature and picked up all the minimum standards in the convention, in addition to binding arbitration, with the view that it would continue to study the other detailed provisions of the MLI and how they interacted with the large treaty network with a view to updating its position prior to ratification.

Following that review the government took the decision to adopt additional optional provisions that will be proposed to be adopted on ratification of the treaty. They were announced by the government in the press release that came out, I believe, the day the notice of ways and means motion was tabled in the House.

Mr. Blake Richards: Can you briefly walk us through the effect of some of those choices in those optional provisions?

Ms. Stephanie Smith: The ones that we have chosen?

Mr. Blake Richards: Yes, the ones that were chosen at the later date.

Ms. Stephanie Smith: One of the provisions that was not in the initial provisional notifications is article 4 on dual resident entities. A decision was made by the government to adopt this provision. It was generally in line with the policy and with a number of prior tax treaties that had been negotiated by Canada. Adopting such provision will allow us to have a greater consistency across our tax treaties for resolving cases of dual resident entities involving non-individuals.

There was also a decision in article 5 effectively to allow countries that currently have committed to providing for an exemption system to change that to a credit system to ensure that taxpayers are not inappropriately getting double tax or a lower rate of tax. It won't have an impact specifically on Canada's elimination of double taxation, because we currently, in our treaty policy and in all of our tax treaties, already provide for foreign tax credit, but it was viewed that allowing other countries to ensure such similar protection was desirable.

Article 8 was another provision that was proposed to be included. Article 8 applies to dividend transfer transactions. The way the tax treaty works is that it has two withholding rates. Our domestic rate would be 25%. Treaties generally reduce that rate to 15% or 5% if the particular corporation to which the dividend is paid has a certain threshold of holdings or control in the dividend-paying company.

The provision in article 8 provides that to obtain the lower rate, they must have exceeded the threshold of ownership or control for a minimum of 365 days prior to the payment of the dividend. This is to avoid artificial transactions in which they increase their ownership just prior to their dividend paying date. It was viewed as something that would be beneficial and that the CRA would be able to administer. It is something that we propose to include in the updated notifications.

Similarly, there is article 9, which deals with capital gains from alienation of shares or interests of entities that derive their value primarily from real property. Generally speaking, under a tax treaty, the source country in which the company that derives its value from real property exists would retain its right, on a disposition of those shares or other interests, to tax that disposition to the extent that the value of the shares principally derive their value from real property.

There were some abusive transactions in which companies, just prior to the distribution of those shares, put a lot of cash into the company such that the value of the real property fell below the threshold, or they sold a property prior to that specifically to avoid the source country having the right to tax. The treaty provision now would ensure that if that threshold were crossed at any time in the 365 days preceding the disposition, the source country would have the right to tax that provision. Including that in Canada's tax treaties was seen to be desirable.

● (1145)

The Chair: We will have to cut it there and move to Mr. Fergus. Obviously, from the descriptions given, all kinds of games have been played to avoid taxes, and those folks should be nailed.

Mr. Fergus.

[*Translation*]

Mr. Greg Fergus (Hull—Aylmer, Lib.): Thank you, Mr. Chair.

Ms. Smith and Mr. McGowan, thank you for your presentation and your honest answers. My fellow member Mr. Kmiec called the topic rather dry. Be that as it may, it's very important stuff. I very much appreciate the opportunity to review the legislation implementing the multilateral convention.

My first question builds on that of my honourable colleague, Mr. Fragiskatos, regarding mandatory arbitration. What are the advantages and drawbacks of the final-offer approach for the mandatory binding arbitration mechanism in the convention?

[*English*]

Ms. Stephanie Smith: Generally speaking, the benefit of the mandatory arbitration provision is that it provides certainty to taxpayers that their double taxation will be resolved. Without the finality of mandatory binding arbitration, the mutual agreement procedure itself only provides that the competent authorities, which in the case of Canada is the Canada Revenue Agency, endeavour to resolve the disputes. Inevitably there end up being a few cases where there is difficulty in resolving those disputes, or when the time frame can be quite long to resolve those disputes. One of the main benefits of tax treaties is to try to encourage trade and investment and to provide certainty for taxpayers and to ensure that they don't end up in a situation of double tax. Those are the significant advantages.

Canada has had mandatory binding arbitration in the convention with the United States since its 2007 protocol. The binding arbitration entered into effect in 2010. It has been considered by both the Canada Revenue Agency and taxpayers alike to be very advantageous in ensuring that disputes are resolved.

In terms of some of the disadvantages, not all of the countries—in fact, only a subset of the countries—are willing to sign on to binding mandatory arbitration. I think to date it's under 30, between 25 and 30, countries that have agreed to binding mandatory arbitration.

● (1150)

[*Translation*]

Mr. Greg Fergus: Have all signatory countries agreed to adopt mandatory arbitration?

[*English*]

Ms. Stephanie Smith: No, unfortunately. It is not a minimum standard provision. Therefore, countries have the option of whether to opt in or not to binding mandatory arbitration. Of the 87 signatories, I think it's 26, but I could be off by one or two. Between 25 and 30 signatories have agreed to binding mandatory arbitration.

[*Translation*]

Mr. Greg Fergus: Are any of the countries that have opted not to adopt the standard important for Canada from an investment standpoint?

[*English*]

Ms. Stephanie Smith: Generally speaking I would say that all of Canada's largest trading partners have agreed to binding mandatory arbitration. In particular, it was something that G7 countries are very supportive of. The countries with whom we have the largest number of MAP cases, mutual agreement procedure cases, generally speaking have agreed to binding mandatory arbitration.

[*Translation*]

Mr. Greg Fergus: I have one last question.

Could the provisions on the taxation of dividends and capital gains have a negative impact on foreign corporations establishing subsidiaries in Canada?

[*English*]

Ms. Stephanie Smith: I'm not sure I would describe it as a disadvantage, because this is a provision that will apply bilaterally. It will apply to dividends being paid both to and from Canada. Yes, if you're talking about a foreign parent company with a Canadian subsidiary, it would impose the discipline to receive the lower withholding rate. To get the lower withholding rate, they would have to have maintained that ownership threshold throughout the required period. It's the same thing with respect to the capital gains. That would work a little differently because that's about a source taxation. Yes, it is a bilateral provision: both Canadian and foreign entities would be expected to meet these conditions.

The Chair: Mr. McGowan, do you want to add something?

● (1155)

Mr. Trevor McGowan: I would, if there's time.

[*Translation*]

Thank you for the question. As you pointed out, it's a very technical area, and so, I'm going to have to answer in English.

[*English*]

You mentioned not giving a disadvantage, and also building upon an earlier question by Mr. Julian,

When we talk about the principal purpose test or anti-treaty abuse rule, certain tax advantages are accorded to our treaty partners. For example, on capital gains, a treaty partner might be exempt on a disposition of shares of a Canadian entity. That's part of Canada's tax policy, and it's common throughout the world. Of course, there are jurisdictions, as we discussed earlier, such as the Cayman Islands, with whom Canada does not have a tax treaty. Tax planning strategies have been effected to achieve tax benefits that have been negotiated under a particular tax treaty, with one of our treaty partners, by entities resident in a country with whom Canada does not have a tax treaty.

When you're talking about the obtaining or losing of an advantage, part of the anti-avoidance, anti-treaty abuse rules in the multilateral instrument would have the effect of preventing non-treaty partners from accessing these treaty benefits. As between treaty partners, it might have a certain effect. In the broader context, where we don't have treaties with everyone and countries generally want to ensure that their treaty policies have force and are respected, it does have that additional benefit of not providing or extending treaty benefits beyond the intention for which they were negotiated and entered into. That applies on both sides of a bilateral agreement vis-à-vis third parties.

The Chair: Thank you for that additional information.

Mr. Kmiec, you have about five minutes.

Mr. Tom Kmiec: I want to go back to those optional components again. Thank you for the list you gave. It kind of corrected some of what I had here.

Thank you, Chair, for making them complete the list.

I wanted to talk about article 10, 12 and 13, which affect permanent establishments. What's the effect of Canada not participating in those three: article 10, the anti-abuse rule for permanent establishments situated in third jurisdictions; article 12, artificial avoidance of permanent establishment status through commissionaire arrangements and similar strategies; and article 13, artificial avoidance of permanent establishment status through the specific activity exemptions? What is the effect of Canada not participating?

Ms. Stephanie Smith: The effect of not participating means that those provisions would not apply to Canada's tax treaties through the MLI.

Mr. Tom Kmiec: What is the tax effect? Why aren't we participating? What's the policy reasoning for it?

Ms. Stephanie Smith: The policy reason, in general, for not applying the permanent establishment provisions through the MLI is that they are very detailed, with very complicated compatibility clauses. Because Canada has such a large treaty network, we were concerned about the complexity and uncertainty it would create through its impact on the particular tax treaties. Because we have a large treaty network, with some of our treaties dating back to 1975, the permanent establishment provisions in particular differ significantly throughout our tax treaty network, and the impact on all those provisions was not clear.

Another reason was that, compared with the other provisions in the MLI, relatively few countries picked up these provisions, and so we would not have had a match with very many treaty partners in respect of these provisions. To the extent that we would have had a match, it may not necessarily have been in Canada's favour to have these provisions. In many cases we would have been the resident's country relative to the other country. That speaks mostly to articles 12 and 13. With respect to article 10 relating to permanent establishments situated in third jurisdictions, that is not a situation that Canada encounters very often. It's a function of how our domestic law works. This typically has not been a problem with respect to Canada's tax treaties.

The fact that these provisions are not incorporated via the MLI does not mean that at some point in the future Canada could not take a different decision and incorporate them through the MLI. It also does not preclude the integration of these provisions in a future bilateral update to the tax treaty.

I note that in respect of the OECD model tax convention, where these provisions are included, there are no reservations from Canada in respect of the policy of these provisions.

● (1200)

Mr. Tom Kmiec: How much time do I have, Mr. Chair? Two minutes?

The Chair: I could give you a couple of minutes. You only have one, but go ahead.

Mr. Tom Kmiec: Okay. I just want to follow up on that. You said that in the future Canada could opt into some of these optional provisions. I guess you said the gist of it, but in summary, articles 12 and 13 are not very popular with a lot of countries. If we adopted these rules, they wouldn't give us much benefit in dealing with it.

What is the mechanism to join one of these optional ones after this treaty is ratified and put into force in Canada? Can we ever opt out? How is that done? Does it come back to Parliament for an opting out? Because you mentioned an order in council process, is it just by order in council?

Ms. Stephanie Smith: To address the last question first, the way the convention is structured, you cannot opt out once you have opted in. In part, that also part, influenced the prudent approach taken by the government with respect to adopting the provisions of the MLI. Once you choose them, you have them forever and cannot opt out. You can, however, withdraw reservations, which has the effect of opting into provisions at any time in the future. Such a process would be done through an order in council, and it would be an update to the reservations and notifications Canada would have deposited with the depositary.

Mr. Tom Kmiec: Just so I'm clear, once Parliament passes this—if Parliament passes this—it goes to the Senate, gets royal assent, and the order in council is issued. Then we become a party to all of the articles the government has indicated that it wishes to be a party to. Then in the future, by the ministry's going back to cabinet, by order in council, it can say that we will then opt in to articles 10, 12 and 13, for example. It would not come back to parliamentarians to have a debate or conversation about it. Is that what I'm to understand?

Ms. Stephanie Smith: That is correct, because it would be the entire convention itself that Parliament would adopt and Canada would ratify.

Mr. Tom Kmiec: This is for all of the optional components? On them, you're saying that you can only opt in by withdrawing your reservation. Wouldn't the wiser policy choice, then, have been to keep our withdrawal from all of the optional things and see how they work out before opting into them? Wouldn't it have been the wiser, more prudent choice to see what the effect is and then choose which ones to participate in?

The Chair: I think that's more a political or policy decision, and I don't think Ms. Smith can answer that last question. I think she answered clearly that in the future, it's by order in council that a decision would be made.

We're turning, then, to Mr. McLeod.

Mr. Michael McLeod (Northwest Territories, Lib.): Thank you, Mr. Chair, and to the witnesses for the presentation.

Any time we start talking about tax treaties, we have to expect that it's going to be very complex and complicated, but the goal here, I guess, is to ensure that everybody pays their fair share of taxes. We look at ways to deal with corporations, individuals or organizations that try to avoid paying taxes, but I'm struggling a bit with how widespread this problem is.

How much money are we talking about? I hear many numbers being thrown out here, and I'm not sure if we have a really good indicator of how much money we're talking about. What is slipping through our fingers, so to speak, in terms of dollar amounts? Is there any way you can give us an indication of what that number is?

● (1205)

Mr. Trevor McGowan: I'm sorry. We don't have that data on hand, but we can look into it and see if we can provide it to the committee.

Mr. Michael McLeod: Well, I think it's very important that we have something to work with in terms of what is actually happening in this country and other parts of the world. My next question was going to be based on how much money we're losing out on in terms of taxes, but....

We're introducing some new legislation through the changes in this act. What is the expected effect? Do we know what effect this act would have on the percentage of what's slipping through our fingers? Do we have a target? Is there a plan and a target? We don't know how much money we're losing out on, but for the changes here, what is the intentional effect? Are we going to cut our losses by half, by three-quarters...?

Ms. Stephanie Smith: Unfortunately, we don't have specific numbers with us here today. I think one of the things that we can do is to provide some numbers with respect to a couple of recent cases the government lost in respect of treaty shopping, and cases for which we would hope that the anti-abuse rule in this treaty would be applied by Canadian courts. There's one that's currently on appeal.

I think we would hope that this would provide more tools for the courts, but beyond that, we can go back and discuss this with our colleagues and see if there are other numbers that are available.

Mr. Michael McLeod: I would appreciate that. I think it's important for us as MPs to have that kind of information. We have to explain legislation to our constituents.

My next question is about whether or not Canada can withdraw from implementing certain provisions if these provisions have unintentional results and significant negative impacts on our Canadian economy.

Ms. Stephanie Smith: The way the multilateral convention works is that once you have opted into provisions, you cannot then change your mind and withdraw from them. The other impact is that the government would always have the choice to terminate the MLI, and would stop on a go-forward basis any amendments being made to our tax treaties. However, the effect of the MLI on the tax treaties that had already had a match and been covered would continue in the future. The government and another state are always free in the future to enter into bilateral negotiations to make any updates to the bilateral relationship that the parties desire.

The Chair: Mr. Julian.

Mr. Peter Julian: I'd like to keep going on the very pertinent questions that Mr. McLeod asked, because we're all struggling with the the extent to which this treaty or convention would actually make a difference. There are a whole range of countries that are notorious tax havens that seem to be excluded from it. The tax information exchange agreements are excluded, and most of the notorious tax havens are linked to Canada through the tax information exchange agreements.

How many of these tax information exchange agreements, which are not covered by the convention, has Canada signed? This helps us, because if we take the Canada Revenue Agency figure of $250 billion in overseas tax havens, that's a massive amount. It could mean billions of dollars in tax revenues every year invested in schools, seniors, and veterans programs. However, that money leaves the country and isn't provided as part of that common basis, that common investment about which I think Canadians feel very strongly. Canadians who pay their taxes believe that all of us should be contributing, yet some aren't.

It's important to know to what extent this actually changes things. We thank you for answering the questions, but it doesn't appear, at least on the surface, from these initial discussions that it really would do much. The agreement really tends to work with countries that already play by the rules. The countries and entities that don't play by the rules are excluded, so materially speaking, Mr. McLeod's question is a very good one. To what extent would this actually make a difference, make a dent, in what is massive overseas tax evasion using overseas tax havens? That is really the relevant question.

Coming back to the tax information exchange agreements, how many has Canada signed, and are they all excluded from the purview of this convention? I assume they are.

● (1210)

Ms. Stephanie Smith: Canada has signed 23 tax information exchange agreements. With respect to the scope of this multilateral convention, no, it's not going to solve all of the problems of tax evasion. It's important to note that the scope of this convention is to deal with situations where inappropriate treaty benefits have been granted, and it's trying to deal with that scope of the problem. Tax information exchange agreements are not part of the scope of this agreement because they do not themselves provide any tax treaty benefits.

For example, with regard to the provision on obtaining the lower rate of withholding tax with respect to the Cayman Islands, there is nothing in the tax information exchange agreement, the TIEA, with the Cayman Islands that provides for a reduction of the dividend withholding tax. A dividend paid to a resident of the Cayman Islands is subject to the domestic rate of 25%. The tax information exchange agreement only provides for the exchange of information between the two jurisdictions.

There are no treaty benefits in and of themselves in the TIEA, and that's the reason for its being outside the scope of this agreement. It would have no impact. Even if you had it as part of the tax information exchange agreement, there are just no provisions to which it could apply. A tax treaty and a tax information exchange agreement are different. They're just very different instruments with different purposes.

Mr. Trevor McGowan: If I could perhaps add, as has been stated, this is a very complex subject area. Perhaps it would be useful to provide a more concrete example to get at your comment—and again follow up on some of Mr. McLeod's questions—of a situation to which we might think that the protections afforded under the MLI might apply.

My colleague, Stephanie, mentioned some previous tax cases that had been lost by the Crown where the tax planning involved was the kind of tax planning this bill is seeking to prevent. In one such case, you had a Cayman Islands corporation that had shares of a Canadian company. If it had sold those shares, it would have been subject to Canadian tax because, of course, Canada does not have a tax treaty with the Cayman Islands that would have exempted it. The fact of Canada's having a tax information exchange agreement with the Cayman Islands isn't relevant, because the TIEA would not have provided that tax exemption on the sale of the Canadian shares.

What the company did then was essentially move or continue into another jurisdiction, Luxembourg, with which Canada does have a tax treaty, in order to avail itself of.... The Crown's position was that it was in order to avail itself of the benefits of that treaty and, as such, to avoid Canadian tax on the disposition of the Canadian shares. I forget the exact quantum in dispute of taxes. It strikes me that it may have been in the tens of millions, although that's something that we can look into and get back to the committee with.

These are some of the sorts of transactions that we have seen and that we have challenged and that we would hope that the multilateral instrument would address. Again, hopefully that example highlights in a practical, real-world situation the differences between the benefits afforded under a tax information exchange agreement and one of our treaties.

● (1215)

The Chair: We have time for a fairly short question, Peter. We're way over time, but go ahead.

Mr. Peter Julian: Okay. Thank you very much, Mr. Chair.

I don't doubt there's some benefit to this. I think what Mr. McLeod's questions get at, and mine as well, are to what extent the iceberg is still out there and what we need to tackle next. So, with regard to the question Mr. McLeod and I are asking, I guess we're pitching that you come back with some sense of how much is excluded from the overall impact of this convention so that, as the finance committee, we can look at further steps.

Thank you.

The Chair: After listening to this discussion, I would ask that you simply put in layman's terms what the bill will do and how it can assist in preventing tax evasion. We're way down into the weeds, and rightly so, but in layman's terms so that people can understand, can you just say what this bill means and what it will really do?

Mr. Trevor McGowan: In—

The Chair: I know we won't solve all of the problems of the world, but it's a step. It's just so we can put on the record in simple terms what it will do.

Mr. Trevor McGowan: Canada has a very large treaty network—close to 100 treaties. Certain benefits can be obtained under these tax treaties. These could be reduced withholding tax rates; they could be exemptions from tax, say, on the sale of properties. Internationally, as part of the base erosion and profit shifting process, a number of countries came together and looked at how best to address problems created by multinational or international organizations shifting their profits into low- or no-tax jurisdictions and thereby inappropriately obtaining benefits under these treaties. All sorts of benefits can be obtained in the tax world; not all of them are delivered under treaties, but some are.

As part of this process, a number of countries came together and looked at ways to address this base erosion and profit shifting. This particular measure deals with treaties. A couple of issues came up. One is that many of the treaties say that their purpose is to prevent double taxation but don't specifically mention preventing no taxation. Two, many of them don't have anti-treaty abuse provisions. Those are the two big anti-avoidance ones.

With the number of countries involved, one can imagine the number of treaties involved. Canada alone has close to 100, as I said. It would have taken a tremendous amount of time and resources to update all of our treaties. Of course, if you could picture trying to squeeze a handful of sand, if we updated a small number of treaties, tax planners could then move to the ones we haven't got to yet. So a coordinated effort was undertaken and this is the result. In an efficient manner, and only in respect of countries with whom we have a bilateral match, it would update our tax treaties to prevent this type of inappropriate tax planning and help protect the tax base.

● (1220)

The Chair: Okay, thank you.

I'll give five minutes to Mr. Sorbara and five minutes to Mr. Poilievre. Then we'll have to go to committee business.

Mr. Francesco Sorbara (Vaughan—Woodbridge, Lib.): Welcome, Trevor and Stephanie.

Thank you for the testimony to date. First, I'm going to refer to article 8 of the MLI and our decision to opt in on the dividend transfer transaction. Originally we did not opt in, and then we decided that we would.

Can you give us some colour on that?

Ms. Stephanie Smith: In some senses, I think the government took a very prudent approach originally, because there was a relatively short time frame between the completion of the multilateral convention and the initial signing ceremony and there was a desire to ensure that there would be sufficient time to appropriately review the treaty network to ensure that implementing such a provision through the MLI would be appropriate in all of the treaties that were likely to be covered, and also to have some time to ensure that the Canada Revenue Agency thought they could administer it.

Mr. Francesco Sorbara: Canada has entered into a number of tax treaties with many governments around the world to ensure that certain tax avoidance strategies that are deemed illegal are not utilized, and tax evasion doesn't take place. We know that our government has invested a lot in the CRA—over a billion dollars—to stem the tide. Ongoing investigations have been reported in the media, and when I think about this on a holistic basis, this MLI, this multilateral instrument that our government has entered into with regards to base erosion and profit shifting and shifting back even.... If you think about the global financial crisis in 2008-09, whether it's the FASB, G20, G7, the number of agreements—the Basel II, III new capital guidelines, new liquidity guidelines, for banks—this is just one of the things that have come out of the 2008-09 financial crisis.

How much teeth does the MLI have in taking us forward to combat tax evasion, tax avoidance strategies that are basically illegal and that cost the government many billions of dollars in revenue around the world, not just here in Canada?

Ms. Stephanie Smith: One thing to clarify is that generally speaking I think for the convention itself, it's main target is actually tax avoidance as opposed to tax evasion. It's generally looking at transactions that, while legal, push the boundaries and go beyond the intention of what the parties wanted.

Mr. Francesco Sorbara: One of the things we don't want to have is treaty shopping and jurisdiction shopping, and a race to the lowest common denominator with regard to withholding taxes. I've read the briefing book, and to my understanding the MLI does deal with those types of issues to a certain extent.

Ms. Stephanie Smith: Yes, it does. I think the main feature of this is to provide for an anti-treaty abuse rule, in this case the principal purpose test. Combined with the new language to be included in the preamble of tax treaties, I think that's a significant tool for Canada that, hopefully, our courts will use to help us address these situations.

Mr. Francesco Sorbara: It is another step and tool in the fight against tax avoidance, specifically aggressive tax avoidance strategies.

Ms. Stephanie Smith: Yes.

Mr. Francesco Sorbara: With regard to the covered tax agreement, which is articles 1 and 2, it says:

> The OECD Explanatory Statement points out that a country might choose not to include a specific tax agreement if the agreement has recently been renegotiated or is currently under negotiation.

Can you clarify that in layman's terms?

● (1225)

Ms. Stephanie Smith: It's indicating that countries have the option of listing all or part of their treaty network, and is just giving one example of why a country may choose not to list a particular agreement. For example, I would say that includes the government's decision not to list Switzerland and Germany, because a decision was taken to bilaterally update those treaties.

Mr. Francesco Sorbara: Of course.

What about transfer pricing and multinationals, and how they act around the world? Does this agreement have any impact on transfer pricing?

I hope I didn't stump you there, Trevor.

Mr. Trevor McGowan: No. It's quite a complicated area. Of course, transfer pricing is the price charged by multinationals in their transactions. It's against borders. Whether the counterparty to an agreement under Canada's tax rules is in a treaty jurisdiction or not, our transfer pricing rules would require them to pay an arm's-length price for the goods if they are buying goods or services, or whatever they are paying for.

There are secondary rules in our transfer pricing rules that can create an amount that's essentially considered to be a return of profits, economically tantamount to a dividend and, as a dividend, subject to dividend withholding tax rates. Those withholding taxes could actually be affected by the presence of a tax treaty. That's a second-order effect. It would be incorrect to say that, no, it would not have any effect, but due to the nature of transfer pricing and the transfer pricing rules, I think it's fair to say that it's probably not the biggest impact coming out of the LMI.

Mr. Francesco Sorbara: Thank you.

The Chair: People can play.

Mr. Poilievre—talking about playing games.

Hon. Pierre Poilievre (Carleton, CPC): What, me?

Voices: Oh, oh!

Hon. Pierre Poilievre: That is an outrageous allegation. I didn't say it was untrue; I said it was outrageous.

Voices: Oh, oh!

Hon. Pierre Poilievre: On the same issue of transfer pricing, when governments have disputes with corporations over transfer pricing, and those disputes are settled, are the settlements made public?

Ms. Stephanie Smith: To my knowledge, when it goes through the treaty process through the mutual agreement procedure, I do not think the settlement itself is made public. To the extent that it's a public company, I suppose any changes in their public financial statements would be public, but it's a government-to-government process, and generally speaking those settlements are not made public.

Hon. Pierre Poilievre: That's interesting.

What is the rationale for keeping them secret? If it turns out a company has been erroneously booking revenue in a foreign jurisdiction that ought to have been booked and taxed in Canada, why wouldn't we want the public to know that the company had attempted to do that?

Mr. Trevor McGowan: Our tax rules very generally have a fairly robust series of protections of confidential information and taxpayers' privacy rights. I know there are some international jurisdictions that are more inclined to publish all sorts of company tax information, and so on, for their taxpayers, but in general, any time the government seeks to make public information dealing with a particular taxpayer, whether it be an individual or a corporation, that's a very carefully considered exclusion to the general policy of not publishing people's tax information on their private affairs or on their tax situation.

Hon. Pierre Poilievre: Shifting from corporate tax, which was the subject of my last question, to personal tax, in both percentage terms and dollar value terms, how much has the government collected from taxpayers with incomes above $202,000 for the last four years?

● (1230)

Mr. Trevor McGowan: I'm sorry, but we don't have that information.

Hon. Pierre Poilievre: Would you commit to providing it? It should be easy to get, because it would be just the people who are in the top marginal tax bracket. Obviously, Finance and the CRA would keep track of receipts from people in various tax brackets.

Mr. Trevor McGowan: Is your question the total amount of government revenues from individuals in the top bracket? I think you said in excess of $202,000.

Hon. Pierre Poilievre: That's right.

Mr. Trevor McGowan: You mean the total revenues from those taxpayers?

Hon. Pierre Poilievre: That's right, in income tax.

Mr. Trevor McGowan: Or do you mean the marginal difference based on the increase from the new rate of 33%? I'm sorry, but I just want to make sure that we get the exact information you're looking for.

Hon. Pierre Poilievre: My question was on the former, but if you could include the latter, I would welcome that also.

Mr. Trevor McGowan: So, it's total tax revenues from individuals—

Hon. Pierre Poilievre: It's income tax revenues.

Mr. Trevor McGowan: Okay.

I can ask my colleagues in the personal income tax division. Unfortunately, we have our treaty expert here.

I can look into it.

Hon. Pierre Poilievre: You can provide that.

Thank you. That's good.

Ms. Kim Rudd: On a point of order, Mr. Chair, I guess I'm somewhat confused with regard to this bill, because Mr. Poilievre is talking about personal income taxes. Are we not having a conversation about corporations and individuals offshore? I guess I'm confused as to how Mr. Poilievre's question fits with this bill.

Maybe he could explain that.

Hon. Pierre Poilievre: It's quite obvious that income tax that has not been paid because it's been improperly declared abroad or hidden in foreign accounts obviously reduces the tax revenues paid by individual in question here in Canada.

Ms. Kim Rudd: I didn't think your question was that specific. You were basically saying "all". Not everyone sends their money offshore. Are you looking at just those specific people?

Hon. Pierre Poilievre: No.

Ms. Kim Rudd: Again, I'm not sure I see the relevance to this bill.

Hon. Pierre Poilievre: Thank you for your comment.

Thank you very much for agreeing to provide the information.

The Chair: I guess what it comes down to is that it may not apply to this bill, but that said, there are two ways of getting at this question. One is as a question on the Order Paper, and the other is having Mr. McGowan provide it at committee. Either way, the information will become available, I gather. Mr. McGowan agreed to try to find the information. We'll leave it at that.

With that, thank you both for your detailed answers on a very complicated bill. It's a technical bill, I guess, which has a lot of implications. Thank you for the background material and your answers to our questions today.

With that, we shall turn to committee business. I neglected at the beginning of the committee to go through the committee report, because it really related to the witnesses we're having today.

You have the 13th report, the report of the Subcommittee on Agenda and Procedure of the Standing Committee on Finance. Do you want me to read it, or does somebody want to move that, and we'll see if there's any other business? I'll read it:

> Your Subcommittee met on Thursday, January 31, 2019, to consider the business of the Committee and agreed to make the following recommendations:
>
> 1. That, with respect to Bill C-82, An Act to implement a multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting:
>
> a) the Committee invite departmental officials to appear on the Bill on Tuesday, February 5, 2019;

We just heard from them. The report goes on:

> b) the Committee invite witnesses to appear on the Bill on Thursday, February 7, 2019;

Those witnesses have been invited.

> c) the Committee invite the Minister to appear on the Bill during the week of February 18, 2019; and
>
> d) members of the Committee submit their prioritized witness lists to the Clerk of the Committee no later than 5:00 p.m. on Monday, February 4, 2019

That's been done. Finally:

> 2. That, pursuant to the Orders of Reference of Monday, January 28, 2019, the Committee study the Supplementary Estimates (B) and the Interim Estimates and invite the Minister of Finance and the Minister of National Revenue to appear prior [to] the end of March 2019.

That is the motion, moved by Mr. Fergus and seconded by Mr. Sorbara.

Is there any discussion? Peter.

● (1235)

Mr. Peter Julian: Thank you, Mr. Chair.

When we spoke last week, we talked about the number of witnesses. It was unclear at that point the number of witnesses that would be submitted. We've submitted a dozen. I'm not sure how many my Liberal and Conservative colleagues have submitted. It would appear to me that we may need to have more than just the one session this Thursday as a result.

If it's just us, then we can get through them all in one day, but if we have an equal number from the other two parties, then it's quite possible we'll need an additional day. I wanted to make sure that adopting this does not preclude having that additional session on the bill.

The Chair: By the looks of it at the moment, we probably won't even need the two hours, because a lot of the witnesses that the three parties requested to appear have declined to do so. It looks like we won't need an extra day.

It's been moved and seconded.

(Motion agreed to on division)

The Chair: Is there any other business?

Mr. Sorbara.

Mr. Francesco Sorbara: Thank you, Mr. Chair.

I tabled a notice of motion a few days ago with regard to the Standing Committee on Finance undertaking a study of open banking. I believe the clerk forwarded this notice of motion to all of the esteemed members of this standing committee. I would like to put forward the motion and have a brief discussion on it, but then quickly go to a vote so that we can adopt it and begin a study on open banking.

Thank you, Mr. Chair.

The Chair: Do you want to read the motion and give your arguments for it?

Mr. Francesco Sorbara: Yes, of course, Chair. It reads:

> That, the Standing Committee on Finance undertake a study on open banking and report back to the House on: a) whether open banking could provide benefits to Canadians; b) how potential risks related to consumer protection, privacy, cyber security and financial stability could be managed; and c) what steps, if any, the Government should take to implement an open banking system?

Mr. Chair, open banking represents the next step in financial innovation for the Canadian banking system. Not only for the Canadian banking system, but worldwide, we've seen other countries, their legislatures and their pertinent committees studying open banking, looking at its impact on consumer choices, competitiveness and the overall financial system.

I'm just reading some of the information with regard to open banking that is out on the Internet. It is already taking place, and if I could give the example, if you go to your regular bank and do your daily banking or weekly banking there, which millions of Canadians do, there are obviously a number of what I would call “interlopers”, a number of institutions that aren't banks, creating services that banks and consumers utilize. With regard to paying bills, apps and wealth management, there is much innovation going on with regard to financial choices available for consumers.

Briefly, I'm going to mention a technical term, “open bank data”. If I could read a description, “open banking helps financial services' customers to securely share their financial data with other financial institutions. Benefits may include more easily transferring funds, comparing product offerings to create a banking experience that best meets each user's needs in the most cost-effective way. Open banking is also known”—and which I think is very important in this study—“as 'open bank data'.”

In the study, we should investigate how the data is being used and shared. I think this is something that Canadians may not think about every day, but participate in it every day. They should know that the standing committee on finance has looked at open banking judiciously and diligently, and has undertaken a study to see how this financial innovation is affecting consumer choice and the financial services sector.

Thank you, Mr. Chair.

● (1240)

The Chair: This is open for discussion.

Mr. Julian.

Mr. Peter Julian: I have a series of questions for Mr. Sorbara.

First, I don't yet understand his definition of “open banking”. It may be close to what others define as “alternative banking”. If that's the case, then what we're talking about is “alternative financial institutions”—for example, the credit union sector, and co-operative financial institutions.

I'd be interested in hearing back from him on the extent to which he thinks this study would be tackling the issues of co-operative financial institutions, credit unions and other alternative banking institutions that have been part of the Canadian mosaic, of course, since the foundation of our country—certainly in the last century.

If he could explain a little more—perhaps after my colleagues have had a chance to intervene—what he means and what the parameters are around the study, because that is not yet clear to me.

Mr. Francesco Sorbara: Thank you for the question, Mr. Julian.

As the chair of the all-party committee on credit unions, I would say that financial innovation is affecting not just the schedule I banks, if you want to define that term. It's also impacting credit unions across Canada, whether it's the larger ones out west or the Caisse centrale Desjardins in Quebec.

With regard to the study, I would look at this within the realm of the financial innovation that is taking place globally in financial services. Open banking will not only impact the larger Canadian schedule I banks, but also the co-ops that you identified, and the credit unions located in both rural and urban Canada. It behooves us to make sure we understand open banking, what that really means in the context and how it impacts credit unions and other financial institutions across Canada. They and their members have as much at stake as account holders at your traditional schedule I banks.

The Chair: Mr. Kmiec.

Mr. Tom Kmiec: Like Peter, I have a bunch of questions as well.

The motion just seems a little incomplete. It uses some terms that I think are vague. I had the same question about open banking meaning different things to different people. I agree.

It sounds like you want to look at both the financial services and how data is dealt with. I don't know if it really falls to the Standing Committee on Finance to look at data. There is a committee of the House, the access to information and privacy committee, which is taken with the issue of social media data and how that's shared on Facebook and other platforms. That committee has more specialty in the privacy of information, how it's dealt with, how it's traded, how it's exchanged between institutions. It's a very broad subject. You could have an entire study just on that particular issue.

With regard to the issue of alternative banking methods, there are also things like Canadian Tire money and institutions that provide points, and how points are monetized and traded. That's an entire kind of rabbit hole that you could go down.

I would like more clarity as to exactly what we mean. Do we mean to make it so broad? It seems like it could be a study forever. I looked at the calendar, and we have about 23 meetings—fewer now—to look at this. I would hope that we don't use up 23 meetings on open banking.

There are a lot of interesting issues that the finance committee could look at. I've given you some ideas. I've tried to table them and suggest studies that the finance committee could have on different subjects. You all know my great interest in the stress test and mortgages and everything related to it. That's much more focused than what I see before me here.

Another part too is that it's big "G" government. It reads, "what steps, if any, the Government", in general terms, "should take to implement an open banking system". It seems like a very broad statement.

You also don't say how many meetings you want to spend on this. Do you have an idea, Francesco, of how many meetings should be dedicated to the study? You haven't mentioned whether a report should be written, and whether recommendations should be provided and whether we should compel the government to provide an answer within a fixed amount of time.

I generally don't like open-ended study motions. I could be convinced, obviously, to vote for it, but generally I don't like it. I like studies to be very specific: giving the government a report with recommendations and a fixed timeline by which to respond to them publicly.

If this is an issue that you believe most Canadians are taken with, and especially I think on consumer protection, privacy, the cybersecurity side of things, especially privacy of financial information.... We saw what happened with Statistics Canada and the dragnet of the 1.5 million households who would have their private information tapped into.

Do you see that being part of the study as well? Is Statistics Canada going to be brought before the committee to talk about the pilot projects, or any other such projects that they're thinking about doing? That's the industry committee, then.

What I'm trying to suggest is that the study could go a lot of places.

● (1245)

The Chair: If I could add to Tom's question, Francesco, do you anticipate travelling for this study? What would the deadline be to have it done? I mean, where is the open banking concept in place already, or where has it started, or whatever?

What you anticipate in terms of travelling and hearings is I guess what I would add to Tom's question.

Mr. Francesco Sorbara: At first glance and first estimation, I think it would be sufficient to have potentially three to four meetings here in Ottawa.

To alleviate Tom's concern, obviously it would not be an open-ended study. I don't like that either, Tom; I agree with you there. I think three to four meetings with due diligence, having the witnesses, the officials, come in, and even various regulatory agencies if we needed to ask them their views....

In terms of travel, England has adopted an open banking system. It came into effect, I believe last year, in 2018. The European Union has also mandated an open banking system, so if we did have the opportunity to travel....

We didn't travel to the United States in terms of pre-budget hearings. We weren't afforded that opportunity this year. It didn't work out. We could put on the docket a trip to the U.K. to meet with their officials in terms of how they implemented an open banking system. If we were really aggressive, we could even go to Brussels and meet with officials there, in terms of how the European Union has mandated its open banking system.

The Chair: Mr. Julian.

Mr. Peter Julian: I'm not sure I'm comfortable making a decision right away on this. I'd like to come back to the definition of open banking. As Mr. Sorbara has mentioned, the U.K. and Europe have implemented an open banking process. I'm struggling to understand what the characteristics of an open banking system are.

We're not talking about online banking or alternative banking. It's a term I'm not familiar with. If Mr. Sorbara could take a moment to explain what open banking is, as opposed to our existing system, it would certainly be helpful to me.

Mr. Francesco Sorbara: I'll answer Mr. Julian's question by working backwards. Think about all those millions of small businesses in Canada that millions of Canadians work for and run and put their efforts into every day. Open banking allows them to utilize products that allow them to be more efficient, to utilize their resources better. For example, PayPal's been invented, and people use it every day. E-transfer of funds is used within our banking institutions.

It's basically the development of products, financial innovation, that users can utilize with their traditional banks, but these products have been developed by third-party providers. It's really meant for ease of use in terms of the transfer of data. When I use the word "data", I don't use it in terms of names, but in terms of financial data. For small and medium-sized businesses, it allows them to be more efficient. It allows them to use their resources better, and it gives them better, more up-to-date information.

In fact, Tom, with regard to your example of mortgages, open banking of financial data would allow, and in some places is allowing.... Say consumers wish to know mortgage rates, how much they can borrow from a financial institution—and we'll exclude the stress test right now. They can have that information at the tip of their hands without even going to the traditional schedule I bank or credit union or another provider or lender. They could have that information in their hands, because there are apps out there that allow them to do that. But they could do it only if the app or the provider is synched in with where their financial data is maintained or contained.

The term really speaks about innovation, Mr. Julian. It's something that is very important for Canadian consumers and people who run small businesses.

● (1250)

The Chair: Mr. Richards, and then Mr. Kmiec.

Mr. Blake Richards: I have some questions. On the idea of studying something like this, there are obviously lots of implications and different directions that it could go in. It would certainly be useful.

Currently the government has this panel or working group that is supposedly studying this, but there seems not to be a lot of information out there about what that panel is doing. It seems as though those who have an interest can't even get any information about what's happening with that and where it's headed.

Mr. Sorbara, I'm curious about whether you have any indication as to how this would fit into that. Would we be inviting the members of that working group to give us a sense as to what they're doing and how that would feed into what we're doing, and how what we're doing would feed into what they're doing? Also, would we be looking to have the minister come and give us some sense as to where the government is looking to go or what its plans are for this working group? Obviously, if we're going to be studying something, it shouldn't be in isolation. We should try to make sure that it's leading somewhere and there's a purpose to it.

At this point, outside of doing a study, I'm not sure where this leads to.

Mr. Francesco Sorbara: Blake, thank you for raising that point. Independent of the consultation, I think it's important for the Standing Committee on Finance to have a view on open banking and its impact within financial services and for Canadian consumers.

The Chair: Francesco, when would you see this concluding, or would there be an interim report? If this is in place in other areas, we certainly need to understand what's going on.

Do you see a deadline?

Mr. Francesco Sorbara: Looking at our calendar and this year's spring session, I believe it would be realistic to have a report done, say, by sometime in April.

The subcommittee can—because we're here for only one week in March.

The Chair: Mr. Kmiec.

Mr. Tom Kmiec: Thank you.

I'm going to work backwards from some of the things you said so I can address some of them and share some more concerns.

With regard to the synchronizing example of people going around shopping, you can already do that today at ratehub.ca. Not that I'm endorsing what they do, but you can find a ton of publicly available mortgage information that gives you an estimate of what you can borrow and what your principal is. It uses some type of engine to scrape that information from publicly available information off banking websites. It posts it there. It's really easy for you to see. So you can already do a lot of pre-shopping.

If we're looking at that, it's been going on since the Internet was born. Hopefully we're not going to do that. It just seems like a waste of the committee's time. There are really interesting subjects, like the stress test, that we could take a look at. If that's what we're going to do, I don't think that's worth our time.

If it's about open banking—we were just chatting a bit on this side about it—we could talk about bankers' hours and how the hours available at your local branch are usually not what you actually need. A brick and mortar style of financial services is going out the window, whereas most of us do most of our banking on these devices. I always say that young people are the most savvy when it comes to their banking needs. They can compare really quickly and they know what type of financial services are available. If we're doing that, then I also don't think it's worth our time, because I think the vast majority of the market has done it itself.

I also think that what you've talked about should lead to the last section here, section c, being changed. It reads, "what steps, if any, the Government should take to implement an open banking system". You said that the U.K. has already done so and that we should perhaps visit it. I'll address that in a moment. Really, it should then say something like, "whether the federal government should implement an open banking system" and leave a binary choice of yes or no. It could be the committee's decision whether or not to recommend it.

You said we could hold three or four meetings in Ottawa. I'd like to hear you talk about how many meetings you would then expect to be outside of Ottawa, how many travel meetings we would have, because going all the way to the U.K.... I would then ask whether that would be post or pre-Brexit.

Then there is Brussels, as well. I'm desperately trying to help the Minister of Finance balance the budget. I'd love to help him out just a little bit more by taking less in per diems. Every dollar helps. If we could all put some money into the kitty, I'm sure Minister Morneau would greatly appreciate it.

I would not want to see us travel overseas. We have video conferencing available; we could just use that.

If it's three or four meetings, that should be in the motion as well. Give some thought right now to making some amendments to the language in the motion. Again, we should move it towards a very clear yes or no on whether we should do an open banking system.

Then, mention in the motion the report, and look at the calendar as to how many meetings there are. Also, look at how we would do this. England itself, that type of trip would take a week, because of the delays coming back and forth.

If you look at the calendar, we have one week in March and then we'll have to deal with the budget implementation act. There will probably be two portions, the ways and means motions, and all of the other things this committee has to deal with, which then takes away our ability to look at other motions that could be moved before the committee to study such things as, as I mentioned, the stress test. There's the Asian Infrastructure Investment Bank. It would be great to get an update from the government on where it's at on the share purchases and whether there have been any developments on Canadian corporations receiving some type of contract from the AIIB.

I think the motion needs further amending so that it's clear what we're trying to achieve and that in it, we commit to the number of meetings, the report, and the recommendations, and we're clear about what we're going to tell or ask the government to do afterwards.

Again, if Brussels is to be part of it too, then three or four meetings would come very quickly. We'd have to set them up and decide on a witness list.

We've talked about some of the general concerns about open banking as a subject area, but I also think that the motion itself needs a few amendments. If you'd be open to amending it to give that clarity and committing ourselves to telling the government yes or no, then I think that would be perfectly reasonable.

● (1255)

The Chair: I have Mr. Fergus and Mr. Julian, and there's another committee meeting that will start in this room in two minutes.

Mr. Fergus, we'll let you start and then I will have a suggestion.

Mr. Greg Fergus: I'll be very brief, Mr. Chair. I'd like to call the question.

Hon. Pierre Poilievre: I have a point of order on that, Chair.

The Chair: If there's ongoing debate, we have to let the debate continue. What I was going to suggest, and then I'll go to your point of order, is that based on the discussion, if Mr. Sorbara could refine the motion somewhat to clarify the number days and travel and deadlines, then we could deal with it at the next meeting. We're going to have time, I understand, if that suggestion flies.

Mr. Poilievre, do you have a point of order?

Hon. Pierre Poilievre: Yes. My point of order is to ask whether or not I'm on the speaking list and will have an opportunity to contribute to the discussion.

The Chair: There's another committee coming in here now, so my suggestion is that Mr. Sorbara refine the motion somewhat and put it to us at the next meeting. You'll be put on the list at that time.

Hon. Pierre Poilievre: Okay. Thank you.

The Chair: Are we agreed?

The meeting is adjourned.

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