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Chair

The Honourable Wayne Easter

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● (1530)

[*English*]

The Chair (Hon. Wayne Easter (Malpeque, Lib.)): I call this meeting to order. Pursuant to Standing Order 108(2), today's meeting is on the subject matter of Bill C-63, a second act to implement certain provisions of the budget tabled in Parliament on March 22, 2017, and other measures.

We have quite a number of sections to go through. Hopefully, we'll get through them today. We'll have witnesses from various departments and areas within Finance Canada to explain the measures that are in parts 1, 2, 3, 4, and 5, and the divisions in the bill.

We'll start with part 1, amendments to the Income Tax Act and to related legislation. We have with us Trevor McGowan, who's the senior legislative chief, tax legislation division, tax policy branch. Also from the tax policy branch, we have the director of personal income tax division, Mr. Leblanc and the senior tax policy officer, Mr. Freda.

The floor is yours. You'll have an opening statement and then we'll go to questions.

Mr. Trevor McGowan (Senior Legislative Chief, Legislative Review, Tax Legislation Division, Tax Policy Branch, Department of Finance): Thank you, Mr. Chair.

I'm going to provide a brief overview of the items in part 1 of the bill, each of which relates to proposed income tax amendments.

Part 1 includes a number of amendments that were announced as part of the 2017 federal budget. These include removing the classification as Canadian exploration expenses of costs incurred in respect of a drilling well. They would instead, unless they're proven to be unsuccessful, be classified as Canadian development expenses. If unsuccessful, they would continue to be Canadian exploration expenses.

They would eliminate, for qualifying small oil and gas companies, the ability to re-characterize up to $1 million of expenses, which would otherwise qualify as Canadian development expenses, as Canadian exploration expenses. The difference being that Canadian development expenses are deductible at a rate of 30% per year, whereas Canadian exploration expenses are fully deductible in the year incurred.

They would revise the anti-avoidance rules for registered education savings plans and registered disability savings plans, aligning them with the current rules that apply in respect of registered retirement savings plans, registered retirement income funds, and tax-free savings accounts.

They would eliminate the ability of designated professionals to use the billed-basis accounting system. They would instead be required to use the general rules applicable to other taxpayers in the Income Tax Act for their tax accounting purposes.

They provide enhanced tax treatment in respect of eligible geothermal energy equipment. The enhanced treatment consists of accelerated capital cost allowance rates at 50% in class 43.2, as well as the ability to classify certain expenses in respect of qualifying geothermal projects as Canadian renewable conservation expenses, which can be deducted in the year incurred, or transferred to investors in flow-through shares.

It would extend the currently existing base for erosion rules that apply to foreign affiliates of Canadian taxpayers, and prevent them from inappropriately shifting income in respect of the insurance of Canadian risks offshore to a foreign affiliate. It would extend those rules to foreign branches of Canadian life insurers, which, for many purposes of the tax system, are treated in a manner similar to foreign affiliates of a Canadian corporation, including their, in very general terms, exemption from Canadian tax on their active business income.

It would clarify who has factual or de facto control of a corporation for Canadian tax purposes. This is intended to return the state of the law to what it was before a recent court decision, and requires that all relevant factors are to be taken into consideration in determining whether a person has factual control of the corporation.

It introduces an election that would allow taxpayers who hold eligible derivatives as income properties to be able to treat them as market-to-market properties, which would allow changes in the value of the derivatives to be realized for tax purposes on an annual basis. Otherwise, the default rule would be taxation on the realization basis.

It would introduce a specific anti-avoidance rule in respect of so-called straddle transactions. These are transactions that use somewhat complex derivative instruments, offsetting derivative instruments to achieve an inappropriate deferral of taxation from one year to the next.

It would allow mutual fund corporations, that are organized as switch corporations, but would now be more appropriately called multi-class mutual fund corporations, where each class of share of a corporation is a separate investment fund. It would allow them to effectively, on a tax-deferred basis, merge or split up into a number of mutual fund trusts. Each of those mutual fund trusts would constitute its own investment fund.

● (1535)

It would also improve the tax treatment of segregated funds. These are insurance products that in many ways, including through their tax treatment, are intended to be similar to ordinary investment funds. There are some minor differences. This bill would extend the ability for segregated funds to merge on a tax-deferred basis and as such achieve economies of scale. It also would allow the carry-forward of non-capital losses from one year to the next. Both of those can currently be achieved by an ordinary mutual fund operating through a trust. That would be extended to segregated funds of insurance companies.

On the measures announced in the budget, finally, there are enhancements to the protections afforded to gifts of ecologically sensitive land. It also implements a number of other income tax measures in part 1 by closing loopholes surrounding capital gains exemptions on the sale of a principal residence. These were released for public consultation in October 2016, and were mentioned as previously announced measures in the budget text in “Tax Measures: Supplementary Information”.

It extends a measure, announced as part of budget 2017, to provide additional authority for nurse practitioners—for many Canadians, they are the primary point of contact in the medical system—so that nurse practitioners can certify things for a number of purposes beyond the disability tax credit, which was announced in budget 2016.

It would also, following on a measure from budget 2016, provide that sales by farmers and fishers of their farming products and fishing catches to qualifying co-operatives would be exempted from the measures announced as part of budget 2016 that would prohibit the multiplication of the small business deduction, allowing each such farmer or fisher to have full access to the small business deduction.

It would also introduce a number of proposed technical amendments that were released for public consultation in September of 2016 and were also mentioned in “Tax Measures: Supplementary Information”, which accompanied the budget. These include measures that would extend the types of reverse takeover transactions to which the corporate acquisition of control rules apply and make a number of tweaks and improvements to the scientific research and experimental development rules. It would provide rules for the allocation of income for federal credit unions between provinces and territories that completely mirror the rules that currently apply to banks. It would make a number of changes to improve the operation of Canada's international tax rules.

Finally, it contains a number of measures that are technical in nature to improve the accuracy and consistency of the income tax legislation and regulations. These are technical amendments that are announced for consultation and included in bills from time to time to ensure the proper ongoing operation of the income tax system.

That's a summary of the measures in part 1 of the bill.

● (1540)

The Chair: Thank you, Mr. McGowan.

The normal procedure here, which I should have explained at the beginning—a number of you haven't been on the finance committee before—is that we don't go with the normal rounds. If you have questions, just catch my eye and we'll go for it.

I see that John McKay, former parliamentary secretary to the finance minister, is here. There's a twinkle in his eye just to be back.

Voices: Oh, oh!

The Chair: Who wants to go first?

Mr. Sorbara.

Mr. Francesco Sorbara (Vaughan—Woodbridge, Lib.): Thank you, Chair.

Welcome, gentlemen.

On the billed-basis accounting, how will contingency fee arrangements and pro bono work be handled with the new rules, please?

Mr. Trevor McGowan: As I said in the introduction, the elimination of the election to use billed-basis accounting would essentially align the tax treatment of the designated professionals—these are, as you mentioned, lawyers but also accountants, dentists, medical doctors, veterinarians, and chiropractors—to the rules that are generally followed by most businesses and taxpayers.

I would categorize those two separately. For pro bono work that's not intended to be billed....

I guess I should explain the general rules. You can value inventory at the end of the year either at its fair market value or on an item-of-inventory by item-of-inventory basis at the lower of cost or fair market value. That's the choice that's available to taxpayers generally, and that's the default set of rules that is considered to provide the truest picture of a taxpayer's income. Pro bono work that is not intended to be billed would have a fair market value of essentially nil because there is no intention to bill for it and there is not going to be a recovery on that time, so it would be valued at nil for tax purposes.

For contingency fees, the taxation is a little bit more complicated. There is case law and Canada Revenue Agency administrative guidance to the effect that, even in the absence of section 34, which provides the election for billed-basis accounting, certain contingency fees where your return on your time is not guaranteed.... A classic example might be that whether or not you're going to get paid at the end of the day is determined by whether or not you win a court case or by how much of an award is given for it, and there's real uncertainty as to whether or not that will be received. There is case law to the effect in those situations.

There is no ascertainable fair market value to the work in progress, so it would not be taken into account for tax purposes. Otherwise, you have for contingency fees the requirement to come up with a reasonable estimate of what the fair market value is. You can tell what you think the value is. Again, if there is a complete contingency fee and you just have no idea, perhaps it's not taxable because it's too uncertain. If it is sufficiently certain, then you can arrive at a reasonable fair market value, and that can take into account anticipated writedowns, end fees, and time that you don't think you're going to bill and so on. If after the end of the year you decide that you were wrong, you can do a writedown of that value for tax purposes.

Lastly—you didn't ask this—the next step is if you have bad or doubtful debts. There are reserves for those as well, so you're not immediately taxed on them.

● (1545)

Mr. Francesco Sorbara: Okay. Thank you for that explanation, especially on contingency fees.

Now we'll move on to the small business deduction. In one of our prior budgets, we prudently, in pursuit of tax fairness, removed the small business tax deduction, the multiplication of that. In this budget, we have a measure put in place, and I think rightly so, for farmer co-operatives more so. I wonder if you could clarify that and ensure that we all are aware that farmers and folks belonging to co-operatives will not be penalized.

Mr. Trevor McGowan: Yes, of course. I would be happy to. I think it would be a good idea to provide a brief overview of the 2016 proposals.

We have a small business deduction that allows qualifying small businesses, on up to $500,000 of their active business income, to get a small business deduction, but it's commonly thought of as just a low rate of tax. It's currently at 10.5% and, as recently announced, is to be reduced down to 9%. In October, that was announced.

The general policy for the small business deduction is that you get one small business limit of $500,000 per business. The tax planning that had arisen for a partnership in a classic case would have one business where each of the partners—let's say there are 10 partners—would normally have to share that business limit, so instead, each of the partners would incorporate a side company that would provide that partner's services to the partnership, thus multiplying access to the small business deduction by the number of partners. With the 10 in my example, that brings it up from $500,000 to essentially $5 million.

The budget 2016 measure constrained that to provide that when there's one business, there's only going to be one business limit. That didn't just apply to partnerships. It also applied to central corporation structures, which could, in the corporate context, achieve the same multiplication results as you could have gotten in a partnership.

As part of our continuing consultation with stakeholders, we heard from a number of farmers and fishers who had dealings with co-operative organizations, and really, for co-operatives, they have membership interests in a co-operative that are for many purposes, including for the purposes of the small business deduction in the tax system. They're treated like shares, but they're not fundamentally the same as shares. They're different enough to be outside of the policy against the multiplication of the small business deduction.

For example, they often have one vote per member regardless of the number of shares, whereas if you're a shareholder and you're voting, that can allow you to elect members of the board of directors, for example, proportionate to the number of shares you have. Likewise, with a normal company, with the shareholdings representing more of an economic investment, you're looking to participate in the profits of the corporation, and your participation in the profits is going to be determined by your shareholdings.

With membership interests in a co-operative, it's a different system. In these cases where you have farmers or fishers selling their farm products or fishing catches to a co-operative, that would be called I think “specified co-operative income” and excluded from the rules that prevent multiplication of the small business deduction.

Mr. Francesco Sorbara: Thank you, Chair.

The Chair: Mr. Albas.

Mr. Dan Albas (Central Okanagan—Similkameen—Nicola, CPC): On the very same topic, last year at this time we had BIA 2. Specifically, we had radiologists who said they worked in shared practices but were denied the small business preferential tax rate because they were billing as a collective but disbursing it separately.... Pardon me. They were actually billing as one and receiving it, and the minister disallowed that in last year's legislation.

Are you saying that if those self-same doctors who used to use shared practices were to form a co-operative they would be able to get access to the small business rate?

Mr. Trevor McGowan: I'm trying to remember exactly how the radiologists would have organized their structure. As I recall, many medical practitioners were organized—

● (1550)

Mr. Dan Albas: It was shared practice.

Mr. Trevor McGowan: Right, and the concern was that they were—

Mr. Dan Albas: Each taken as an individual....

Mr. Trevor McGowan: Right. They were considered partnerships legally, and the rules apply to partnerships and central corporation structures. I don't know that they apply to...or they don't apply to true co-operative structures that are not partnerships. The concern, as I recall from 2016, was that for a lot of these structures, they would be characterized at law as partnerships, but if you don't have a corporation carrying on a central business or a partnership, and instead it's carried on separately by a number of people sort of co-operatively, then the rules wouldn't apply. They apply in respect to partnerships and central corporations.

Mr. Dan Albas: If they have a co-operative structure, would they be able to have access to the small business deduction even though there was a multitude of them working within that?

Mr. Trevor McGowan: The difficult is in—

Mr. Dan Albas: They each would get a share, though. That's what you're saying is happening for farmers and fishers.

Mr. Trevor McGowan: I think part of the difficulty is the terminology. If you have a co-operative, in this case for the purposes of the tax rules, it would be treated as a corporation, at least for the small business deduction rules. But if you're talking more colloquially and not in the specific technical sense that you have in the tax rules, they're carrying on.... I shouldn't say "carrying on business in common" because that's the technical legal test for interpreting a partnership, but if you have a number of people operating through a joint venture or in a somewhat co-operative fashion, then that's a different thing.

As I recall, the concern from a lot of medical practices was that, while they initially thought they ought not to be considered partnerships for the purposes of the rules, they might be considered partnerships legally, and, as such, would be into the multiplication of the small business deduction rules that way and not because they were legally organized as a corporate co-operative within the purposes of the small business deduction rules.

Mr. Dan Albas: Okay. I'm going to take forward that, if they had formed a co-operative instead of a shared practice, then, in the same vein, they should receive equal treatment, because I hear that we're all about tax fairness in Canada, right?

We had a whole bunch of people last year who were hit on average, I think, $40,000. There were some, obviously, hit much harder than others and many of them faced a tax bill. To me, this seems to be completely contrary to what we heard last year.

Anyway, I'd like to go back to the elimination of the use of billed-basis accounting by designated professionals.

First of all, I have a quick question. In the summary of the bill, you list it in paragraph (d), yet it's the first provision in the bill. That doesn't seem to coincide. Maybe next year that might be a thing to consider to make it easy for members of Parliament to walk through the summary.

Now, in the proposed act here, it's called "work in progress" versus being called "billed-basis accounting" in the summary. Are they the same thing?

Mr. Trevor McGowan: Work in progress is your work that has been done up to a particular point but that is not yet billed. Billed-basis accounting versus accrual accounting are two different ways of treating for tax purposes your work in progress. Your work in progress is a thing, and the question is, how is it to be taxed?

The general rules provide for accrual accounting, but this provision in the act allowed designated professionals to elect into a billed-basis method, which would change the tax treatment of how work in progress is taxed. That's how they relate.

Mr. Dan Albas: Okay. But you see how, when you say one thing in the summary and then another thing in the actual act, it can be a little bit confusing to the average person. Consistency is key, just so we're all on the same page.

When it comes to low-income individuals, say they end up in a car accident, and ICBC in my province says, "We're not going to pay you for things". It happens all the time. Someone goes to a lawyer, and the lawyer says, "I'll represent you. It's not going to be free, but if we have a winning case, I'll get a percentage, a contingency".

How does that work in that case? Would they be paying tax, about 20% per year, on something that may never result in money coming in the door?

● (1555)

Mr. Trevor McGowan: As I noted earlier, it depends on the specific facts. I'd probably need a bit more detail in your case, but I can say there is case law and CRA administrative guidance in support of the proposition if there's real uncertainty about the outcome of the case. If it's a contingency fee arrangement, that might —even absent section 34 billed-basis accounting election—be excluded from your inventory for tax purposes so you wouldn't be taxed on it in the current year.

Mr. Dan Albas: When you say "inventory", you're talking about a service that's being delivered, correct?

Mr. Trevor McGowan: That's right.

Mr. Dan Albas: Okay, so you're equating inventory on a store's shelf to a service of a lawyer.

Mr. Trevor McGowan: That's right. Your work in progress, your performed but unbilled hours, are treated for tax purposes essentially as inventory.

Mr. Dan Albas: If someone does a lot of work and doesn't get anything for it, shouldn't they be able to write that off? There are expenses all along the way. Filing papers, that's something the lawyer receives no remuneration for. Are they going to be able to lower their tax burden under this new section, or is this expected to be added on when they'll be paying more?

Mr. Trevor McGowan: In the abstract, you can elect to choose a fair market value or the lower of cost or market method for valuing inventory.

Where you have a lawyer who's incurred expenses, costs in order to earn their revenue, the lawyer can measure that file under work in progress, in respect to that file, at the lower of its cost and fair market value. I believe in your example it was $10,000 of work in progress at the end of the year. Let's say they have $10,000 of work in progress at the end of the year, and they have incurred $6,000 of costs, for example, to pay an associate on the file or whatever is properly allocable to it. They would value, for tax purposes, at the lower of their costs and fair market value, so the costs, which would be generally deductible, would offset the income from the work in progress. But that's just in an abstract case.

I recognize you'll have more than one file in a practice, which brings us to the second point, which is that it essentially represents a deferral. Think of it in the simplest case, where you perform services in one year and then bill in the next. Let's say, to make the example simple, you have just that one item worth $10,000. Under the billed-basis system, where you get it included in your inventory when you send out the bill, you could add the costs in the first year but then you'd have an income inclusion in the second year, where the first year's income was deferred to. You will pick that up in the second year.

In that year, if you take on another file with a contingent amount to be paid after the end of the year, so you bill at the end of the year. Let's say that's of comparable size of $10,000, then you wouldn't bill for that in the current year, your second year, you would bill it in the third year. If you look at the tax results in the second year, you have $10,000 that has been deferred from the previous year, and then $10,000 deferred into the next year. You can see that you end up in roughly the same place as if you had, at least in respect of that year, been taxed on an accrual basis.

If you're deferring income from year to year every year, and certainly taken across the industry, it's primarily a deferral benefit where one inclusion from a previous year would ordinarily tend to offset, to varying degrees, income deferred to a following year. You have that averaging out as well that mitigates the impact of the change.

To summarize and answer your question, first, if you have a real contingency, perhaps it's not included under the case law and general rules. Second, if it is going to be subject on an accrual basis, there's the option to use the lower of cost or market method. Third, if you have a number of files, where some are billed and some aren't, over time you would expect the other deferrals to even out.

● (1600)

Mr. Dan Albas: Okay, so if a lawyer decides to base his or her own practice specifically on contingency fees, and there's no income in a year, they're expected to pay tax for what they provided.

Mr. Trevor McGowan: That's a situation where a lawyer has no revenues in the year.

Mr. Dan Albas: Yes, the lawyer has just expenses.

Mr. Trevor McGowan: Right, and you say it's on a contingency basis.

Mr. Dan Albas: Yes.

Mr. Trevor McGowan: As I said, there is case law to the effect that if there's real uncertainty about whether you'll get it or not, then it might not be included in the year.

Mr. Dan Albas: How do you define what's a winning case?

Mr. Trevor McGowan: You go to the case law in the Canada Revenue Agency—

Mr. Dan Albas: Are they going to tell you if you have a winning case?

Mr. Trevor McGowan: For the criteria to help you determine if your case is sufficiently likely to result in income...but also you could have a valuation of the lower of cost or market.

Mr. Dan Albas: Okay, so if we're going to treat things like inventory, if I was a grocer, and I had inventory that would go bad, technically I can write that off. I don't have to pay tax on stuff that has gone bad. Is that correct?

Mr. Trevor McGowan: That's right.

Mr. Dan Albas: If I get a case on contingency that goes bad, I have to pay tax on it because I'm not going to know that the case has gone bad until I've reached a conclusion, which due to our court system.... We don't have the fastest system in the world. I know in Vancouver they actually closed family chambers for a day because they didn't have any judges.

People, by the way, still had to pay their lawyers. Of course if they're on contingency, I guess the lawyer would have to pay tax for that day.

Mr. Trevor McGowan: To answer your question, there are a few things I think that are implied in that. You say that a lawyer paid tax in one year and then after the end of the year determined the amount to be uncollectible or a bad outcome. In the first year, they would have had to have made the determination that it would likely result in income. Again, it's the same sort of determination as an engineering firm that gets paid at the end of the project. It's the world that they're already in, but for lawyers, of course, you win or lose—it's binary—court cases sometimes.

If you made that determination, you include it in your income in year one. Then you would have a writedown in year two and you'd have a deduction or a loss in that year.

Mr. Dan Albas: Again, there are so many circumstances. For example, you take someone's case and it's an elderly person who has been struck by a car and can't afford to pay you. You go to try to get them some money. In a year or two down the line when their court case finally comes up, they die. It may be natural causes or maybe it's because of ill health. What does the lawyer do in those kinds of cases? Where they have paid taxes, do they get to apply for it back?

It's lost time, which, by the way, to a professional is very expensive.

What I think may end up happening is that many lawyers might say, particularly in more rural areas, they just don't take cases anymore on contingency, because they don't have the client base to subsidize them, to subsidize these extra taxes.

I'm very concerned, Mr. Chair, that this is going to have serious impacts.

I'm not making this up. First of all, I did work in a law office for about a year and a half. I got to know clients, and I got to know how things don't work out the way that we try to arrange life. Life is very messy. The second thing, though, is that I've actually been contacted by people in B.C., members of the bar, who say exactly that. The big firms in the big cities will subsidize these cases because they know that every one out of 10 may win big, but for the smaller firms in the rural areas, people will not be able to access justice.

I really am disappointed with this provision.

I have other things I'd like to talk about, but we'll go to someone else.

● (1605)

The Chair: We'll come back to you a little later.

We'll move on to Mr. Dusseault and then Ms. O'Connell.

Mr. Dusseault, go ahead.

[*Translation*]

Mr. Pierre-Luc Dusseault (Sherbrooke, NDP): Thank you, Mr. Chair.

Thank you to the witnesses for being with us today and providing us with these explanations.

I always say that, in Canada, ignorance of the law is no excuse. All Canadians are expected to understand the Income Tax Act so that they can respect it. For that reason, I think that, with each opportunity, we should strive to simplify it, rather than make it more complicated.

That said, I am mainly interested in clause 16. I'm referring essentially to the department's explanatory notes. The provision deals with pension income splitting and makes changes to the retirement income security benefit payable under the Canadian Forces Members and Veterans Re-establishment and Compensation Act.

Could you explain the changes in greater detail? If I understand correctly, the provisions limit the ability to split income. Is that correct?

[*English*]

Mr. Trevor McGowan: This is a technical amendment that had been released in September 2016 for comment. My colleague Pierre is just more of a pension expert than I am, but this is a technical tax amendment.

It essentially allows couples to be able to split the retirement income security benefit under part 2 of the Canadian Forces Members and Veterans Re-establishment and Compensation Act for the purposes of pension income splitting rules, and the existing registered pension plan limits. It's an enhancement to previously announced, or previously enacted, rules to provide for proper income splitting, or proper splitting of pension income in the context of this retirement income security benefit.

[*Translation*]

Mr. Pierre-Luc Dusseault: In that case, it is meant to clarify the situation involving pensions payable under the Canadian Forces Members and Veterans Re-establishment and Compensation Act.

I'll leave it at that, for now, Mr. Chair.

[*English*]

The Chair: Ms. O'Connell.

Ms. Jennifer O'Connell (Pickering—Uxbridge, Lib.): Thank you, Mr. Chair, and thank you all for being here.

My question is in regard to the ecological gifts program, and specifically around the change currently proposed that the Minister of Environment and Climate Change must approve the recipient. If I'm reading this correctly, the act is to amend the requirement that municipalities and municipal public bodies can perform this function on behalf of the government.

Am I understanding that correctly, and if so, what is this process? How do the municipalities...? Do they request this or do they automatically receive this ability? What does this change look like in practice?

● (1610)

Mr. Pierre Leblanc (Director, Personal Income Tax Division, Tax Policy Branch, Department of Finance): Many eco-gifts go to what are considered qualified donees, so charities, conservancy agencies. There's a process now, just to ensure the integrity of the program, that the Minister of Environment and Climate Change, or supported by her department, basically assesses the claims and makes sure that the gifts, the arrangements, are consistent with the goals of the program.

As the legislation currently stands, where it's a municipality, there's no such verification or assessment required. It's an automatic process, so the idea of this particular amendment is to basically level the playing field, or to have equal treatment, so that the due diligence that is performed will be performed for municipalities or other bodies performing a similar function, as it is for registered charities.

Ms. Jennifer O'Connell: I see. It's not the municipalities approving; it's that they have to go through the process if they're receiving.

Mr. Pierre Leblanc: That's correct.

Ms. Jennifer O'Connell: Okay.

Then in regard to these changes as well, I guess there have been concerns or suggestions that, for example, when a charity is established for a sole purpose.... I know, at least in my area, that there are a few in terms of conservation groups that become stewards of various lands. Sometimes in doing so, there are costs associated with, let's say, the survey of the land or some of the acquisitions from it that the charity would pay. It's not coming from the estate, but then there are treatments of that funding, and it's not included in part of the gift.

Is there anything that deals with some of the costs associated with that transfer, that gift of the asset, or is this not part...?

Mr. Pierre Leblanc: I think I can tell you that's not part of any of the amendments that are proposed here.

Ms. Jennifer O'Connell: Okay. Thank you.

The Chair: Mr. Gerretsen is next.

Mr. Mark Gerretsen (Kingston and the Islands, Lib.): Thank you, Mr. Chair.

Mr. McGowan, I want to go back to the discussion you were having about billed-basis accounting.

I share some of the concern about how you're going to track what was in a previous year, and not necessarily with respect to pro bono, as Mr. Sorbara talked about, but more about those cases where the deal, so to speak, with the lawyers, is how it gets paid out afterwards. I'm not as concerned about the expenses, because I think that everybody, by default, is going to expense the costs as they're incurred in that year.

How do you know that you can accurately capture that after the fact? You don't know how much time you're going to put into a particular case. It might go on for several years. Are you suggesting that the individual amount of time billed should be captured in each year and then reconciled later on?

I'm just trying to wrap my head around that. I was trying to listen to the kind of weird explanation, and I didn't quite get it.

Mr. Trevor McGowan: The amount captured in a particular year would just be the amount of income that's earned in that year, and—

Mr. Mark Gerretsen: Like an hourly rate, then?

A lot of those cases work on an amount that is garnered in a decision. A percentage of that, 20% or 30%, goes to the lawyer, or whatever it might be. It's going to be very difficult to capture that previous year when you don't know the outcome of what it will be.

Mr. Trevor McGowan: Okay, so first, I thought you were getting at the end of the year when you're determining how much to include in your income and whether you take into consideration—

Mr. Mark Gerretsen: Right.

Mr. Trevor McGowan: —your billings that are going to happen after the end of the year.

It really is your work in progress of the amount that has accrued until that point in time. Will you put in 10 hours and plan to bill it out on January 15, or is it a municipal board hearing that could go on for another 10 years?

If that doesn't factor into how much you've earned during the year, at the end of the year, you have to make a determination of how much your work in progress is worth. Let's say, you bill at $500 an hour, and you've put in—

● (1615)

Mr. Mark Gerretsen: I'm sorry to interrupt, but what if the arrangement with the client is a percentage of the yield as a result of the case?

I mean, a store quite often will sell services or goods for different amounts, and they have to assess a whole bunch of stuff into it. If I were a lawyer, if I'm going to assess what my value is in this particular case, my hourly rate might be more if I determine that my outcome of a success is less likely, because there's a greater risk to me to do that.

Are you suggesting that they just take their hourly rate times the number of hours they had, and then apply that?

Mr. Trevor McGowan: I think that if you know that there won't be a premium billing and your recovery rate's at 100%, then that's probably what you would do to determine the fair market value of it, although there are other considerations.

However, that's not the situation you were talking about. You were talking about when you bill 100 hours, and maybe your recovery is higher than your normal billing rate—or lower, depending on the outcome of a case—or perhaps it's contingent, in the sense that you know that you'll bill *x* dollars per hour for the case, but there's some uncertainty about whether you'll be able to collect at the end of the day or will just take a writeoff. That's where you have to make a determination at the end of the year, based upon the facts, of the worth or the fair market value of the work you've done to that point.

It's difficult to put exact numbers on it, but let's say you have $10,000 of work in progress. You make a reasonable determination that you'll probably collect 80% of it, so then it would be worth $8,000. That's where the ability to come up with a fair value comes in. As I said earlier, if it is truly uncertain, if you just don't know whether or not you're going to win it or whether or not you're going to get paid, there is case law supporting the notion that you don't have to include anything.

Third, there is the ability to pick the lower of cost or fair market value, a method for inventory where you have that kind of file. Let's say you know that your costs are $6,000. You think your costs might be $10,000, or they might be up to $14,000, or they might be as low as zero. If you reasonably think that it probably will be $10,000, you can pick the lower of cost or fair market value to take the $6,000 of cost. So you're insulated from that, to some degree.

Mr. Mark Gerretsen: I want to state for the record that I am quite supportive of the elimination of billed-basis accounting as it relates to certain professionals, as you've indicated here, but I do share a concern that it will be hard to capture that. I think it's extremely important that CRA figure out how they will do that. To suggest that you'll have to weigh the likelihood of success.... I mean, who will be the judge of that? Will it be somebody at CRA? How will that all work? I'm throwing that out there as a concern.

Still in relation to this, is there a timeline, or a certain amount of time during which it needs to have taken place? For example, if an accountant starts work on December 29 and finishes it on January 3, do you expect them to also split that into two invoices? Is there a timeline for this? A lot of people outside of professionals, a lot of businesses, will quite often do that. Tradespeople or whoever will start some work that's maybe only a week long but happens to go over that period. How does the timing work on that?

Mr. Trevor McGowan: I thought you were going to ask a different question, which I was happy about, because I'd forgotten to mention that this measure initially had a two-year phase-in period and after the consultation was extended to five. In terms of timing, that's worth noting. That came out as a result of the consultation, and in fact from comments we heard from the CBA and others.

● (1620)

Mr. Mark Gerretsen: I'm glad you were able to get that in there, but can you answer the question?

Voices: Oh, oh!

Mr. Trevor McGowan: Yes. Assuming you had a calendar year-end, which I'm sure was the case in your example, then for that year, the first year, you'd be taxed on your work in progress that accrued up to the end of the year. You wouldn't have to send out two invoices to the client, but the amount you earned, the amount of income that accrued to you in the first year, and the costs, would be taxable in the first year.

Mr. Mark Gerretsen: For your accounting purposes, it's two separate invoices...or not invoices, but it's separated so there is no timeline. If you start something on December 29 and you end it on January 3, then you're expected to properly distribute it between the two years.

Mr. Trevor McGowan: Yes.

Mr. Mark Gerretsen: Okay. Thank you.

The Chair: Thank you.

On my list I have Mr. McKay, Mr. Poilievre, and Mr. Dusseault.

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

It's a great pleasure to be at the second-best committee on the Hill.

A voice: What's the first one?

Hon. John McKay: I'll let you work that one out.

The notes here say, “introduce new rules to ensure that the taxable income of federal credit unions will be allocated among provinces and territories using the same allocation formula as applicable to the taxable income of banks”. What does that mean?

Mr. Trevor McGowan: Currently, if a bank operates in more than one province, they have to allocate their income according to which province they earn it in. With recent rules affecting federal credit unions, this would essentially provide the exact same set of rules for credit unions to allocate their income as between—

Hon. John McKay: Is this something the credit union has been asking for?

Mr. Trevor McGowan: I believe so. I don't want to misrepresent things, but of course they need certainty. I think they had asked for that. I think it's in regulation 404(1), separate from 404, which is for banks, because there was a desire to not be treated as a bank. It provides certainty and clear rules for credit unions in determining what income is allocated between provinces.

Hon. John McKay: It provides certainty and clear rules for credit unions. It's another thing to provide clear rules and certainty to credit unions as a bad thing. The question really is, if the credit unions are not asking for this, then why are we here? I kind of agree with the general principle of financial institutions being treated equally; however, credit unions have unique capital challenges, as you well know, and I don't know whether this works for or against them.

The Chair: We may need to have one of the credit unions as a witness.

Hon. John McKay: I think that would be a noble thing.

The Chair: We will have to try to do that.

Hon. John McKay: I'll move on.

Mr. Trevor McGowan: I can't say with certainty that they came to the department and asked for it, but it's not something that we've heard concerns about. In September 2016 we released these proposals for public consultation, and I don't believe we heard any criticism of the proposed allocation. I know that we had put credit unions separate from banks in order to accommodate their requests.

Hon. John McKay: Does this apply to just federal credit unions or all credit unions?

Mr. Trevor McGowan: It would need to have income allocated between the provinces.

Hon. John McKay: Sorry, it looks like it is federal. I'll move on, because I don't want to use my colleagues' time.

Is the clean energy accelerated CCA similar for energy sources other than geothermal?

Mr. Trevor McGowan: Yes, that type of treatment, the accelerated capital cost allowance, is basically tax depreciation. In class 43.2 it's a 50% rate. That can be available not just as proposed for geothermal but also for wind, solar, small-scale hydro, and a few others.

Hon. John McKay: Are these accelerated capital cost allowances then for that class of energy producer?

Mr. Trevor McGowan: That's correct.

● (1625)

Hon. John McKay: Is that class different than, say, carbon-based energy producers?

Mr. Trevor McGowan: The accelerated capital cost allowance rates in class 43.2, which itself builds on class 43.1, are only available in respect of the specific types of projects listed in that class. They're all, I think it's fair to say, what you would consider green energy projects, and they are separate from the general rules that might apply to other companies.

Hon. John McKay: Again, I see treating all energy sources in similar CCAs, but there may be an argument to be made for non-carbon-based energy products to have an accelerated capital cost. If that could be answered, I'm sure that would be useful to the committee.

Mr. Randy Freda (Senior Tax Policy Officer, Business Income Tax Division, Tax Policy Branch, Department of Finance): There is no question that, in terms of class 43.2 items, the idea is to provide a fast rate of acceleration for those products with the idea that they're aiming to....

Hon. John McKay: Stimulate an industry....

Mr. Randy Freda: Yes. Also, it's for a cleaner environment and so forth on that front.

Hon. John McKay: There's a public policy goal.

You say here under the anti-avoidance rules that these measures will extend the application of the anti-avoidance rules to registered education savings plans, RESPs, and registered disability savings plans. I don't understand how you could use an RESP or a disability savings plan to avoid taxes. What's the public policy harm being addressed here?

Mr. Trevor McGowan: These anti-avoidance rules are developed in the context of RRSPs, mainly, and tax-free savings accounts. Perhaps the potential harm is clearest in those cases, but also definitely seen in the RESP and RDSP sphere.

There are essentially three different concerns that are addressed by these rules. One is improperly removing value or property from a tax deferred account. Classically, if you have money in an RRSP, you're taxed on the way out, so it prevents the avoidance of that. There is getting a deduction for or some sort of other tax benefit for contributing amounts to a plan.

Then there's also the inappropriate shifting of income to a plan with certain tax advantages. A very simple example might be if I had an account, and I put in $100, used that $100 to buy shares of a company I control, and then paid as much dividends as I wanted into it in order to just shelter all my money in say a tax-free savings account.

Hon. John McKay: Do people actually shelter their money in RESPs?

Mr. Trevor McGowan: No. That's kind of the harm that these anti-avoidance rules were intended to prevent. These measures provide for a consistent set of anti-avoidance rules that apply across the different vehicles, from RESPs, RDSPs, and TFSAs, to RRSPs.

Hon. John McKay: You're applying anti-avoidance rules to all classes of these savings plans even though there's no real evidence that RESPs and disability plans actually engage in any anti-avoidance of tax.

Mr. Trevor McGowan: Most of the anti-avoidance activity we've seen has been in the RRSP and TFSA context, less so in, I think it's fair to say, the RDSP and RESP context, but the potential is still there.

Hon. John McKay: This is a potential abuse that you're addressing, rather than a reality of abuse.

Mr. Trevor McGowan: Currently, there are inconsistencies in the tax treatment of different deferred plans, so for simplification of benefits, and the benefit of having a more coherent tax system, there are certain advantages to having one set of rules apply to everyone instead of a more piecemeal approach, but then also, there are gaps in the rules that could be exploited. We believe these would proactively prevent abuses in those two types of plans.

● (1630)

Hon. John McKay: I understand the symmetry one might want as a tax official, but again, the reality and the practicality is maybe something less than that.

Finally, I share the general concern expressed by Mr. Gerretsen and Mr. Albas concerning the billed-basis accounting. Having practised law for 22 years, I would look at this as just a major headache, an absolute delight for my accountant, and a conflict for my partners, because one partner would probably do the work-in-progress stuff, and the rest of us would be doing cash or something very similar, where the bill and the activity were closely linked.

What I don't get, since this is one great deferral that started out as a two-year deferral, and now a five-year deferral—a deferral isn't quite right, a phase-in. I don't see the public policy gain in this activity. Initially, when you started, you essentially moved a whole bunch of work in progress into income, and you whacked the tax. Now you've pushed that out over five years. I don't see the revenue gains to the government now that you've effectively moved from two years to five.

Mr. Trevor McGowan: I think there are maybe a couple of points to that, if I understand your question correctly. One, you'll see in the revenue estimates published as part of the budget supplementary information that when it was initially a two-year deferral, there was a short three-year period of income inclusion—extra revenues for the government—and then it went down to zero, representing the fact that it was a timing change. You are absolutely correct that we had not booked any revenues after the phase-in period. Of course, moving from two years to five years would prolong that phase-in and would reduce the impact per year for affected professionals.

In terms of the public policy, this arose as part of the tax expenditure review undertaken by this government over the past year —or more than a year. They looked at all the tax expenditures, deferrals, and the like available and determined which ones continued to meet a good public policy goal and which did not.

In the 1980s, professionals, other than the enumerated professionals in section 34, were required to move from a billed-basis system over to an accrual accounting system.

Hon. John McKay: I can remember that.

Mr. Trevor McGowan: That was seen as providing a better recognition of income, a truer picture of income, with the idea that under the tax system—and you can look at the IKEA and Canderel Supreme Court of Canada decisions—the goal is really to provide the truest picture of income in any year to determine the most appropriate base for taxation. The ability to elect to defer income until a bill is sent out under billed-basis accounting was seen as a deviation from that ideal system.

As I understand it, it was done in the 1980s in part because of the different regulatory landscape of the time and in recognition of the fact that back then the enumerated professionals weren't able to access a lot of the benefits available through incorporating their businesses. Of course, that's not the case any more, so the original justification for excluding those professionals from the general rule, which provides the truest picture of income, is no longer available, and it was considered to be inappropriate to maintain the election.

Hon. John McKay: I'd like to carry on this conversation about going from cash to accrual to modified accrual to billed-basis accounting, but I'll defer my time to my colleagues because they'll get a little upset with me. I wouldn't want the chair to be upset with me. That wouldn't be very—

● (1635)

The Chair: That's a great idea, John.

I will take this opportunity to remind members that we have 17 sections to get through, and we're on part 1. It will be the longest, no doubt.

Now we have Mr. Poilievre, then Mr. Dusseault, and then Mr. Fergus.

Hon. Pierre Poilievre (Carleton, CPC): Thank you.

I want to follow up on the questioning of Mr. McKay regarding the registered disability savings plans and the anti-avoidance measures that the BIA would institute with regard to those plans. I'm still not clear on exactly how one would use an RDSP to avoid paying tax that one ought to pay.

Mr. Trevor McGowan: An RDSP is set up as a trust for the benefit of a disabled individual.

Hon. Pierre Poilievre: Yes.

Mr. Trevor McGowan: It's tax-advantaged in the sense that it allows for the trust to have access to graduated rates that are normally only available to individuals, or natural persons, whereas trusts are typically taxed on their top marginal rate. There would be an incentive, then, for a top-rate taxpayer to shift income to a registered disability savings plan to access the lower tax provided by the marginal rates, and to leave it in that plan to earn income subject to lower rates. Then at a later time they could use one of the schemes that the anti-avoidance rules are designed to prevent from extracting value from the registered disability savings plan to their own benefit, as opposed to paying it out to the benefit of the disabled beneficiary. That might be one example.

Hon. Pierre Poilievre: Doesn't the plan have to be paid out to the beneficiary?

Mr. Trevor McGowan: Yes, that's absolutely the policy, and that's—

Hon. Pierre Poilievre: That's currently the policy, isn't it?

Mr. Trevor McGowan: That's right, and that's—

Hon. Pierre Poilievre: Okay. Under the scheme you've just described, how would a non-disabled person improperly use an RDSP to accumulate low-tax gains and then pocket them himself, rather than having those gains go to the disabled beneficiary?

Mr. Trevor McGowan: One example could be taking funds from the RDSP and investing them into a corporation owned by that individual. That would be a prohibited investment under the anti-avoidance rule.

Thus, you could put $100 into a registered disability savings plan, to use a simple example, keep it in there to access the marginal rates, and then when you want access to the money, you invest it in one of your private corporations. Let's say that it's $120 because you earned income over a number of years. You take that $120 and invest it in a corporation you control or lend it to a corporation you control or to yourself, and then the money ends up essentially back in the hands of the person who established it. Again, you can see that as being more enticing tax planning in the world of registered retirement savings plans and TFSAs, where income earned in the registered plan is tax free.

Hon. Pierre Poilievre: What is the current contribution limit per year for RDSPs?

Mr. Pierre Leblanc: There is a $200,000 lifetime limit.

Hon. Pierre Poilievre: It's a lifetime limit, but it can be contributed at any point throughout the lifetime?

Mr. Pierre Leblanc: Actually, I think it's just on the basis of a lifetime limit. We'll follow up on that.

Hon. Pierre Poilievre: Okay.

Are you seeing people use TFSAs to invest in private corporations in order to enjoy tax-free returns that they shouldn't be enjoying?

Mr. Trevor McGowan: When the tax-free savings accounts were introduced, they contained a number of what were at the time cutting-edge rules to prevent that type of planning. There were amendments made shortly after the TFSAs were announced, but they had a pretty comprehensive and strong set of anti-avoidance rules that came out with them. Because they worked so well, actually, some of those were later extended to RRSPs. Using that as a model, in this bill they would be extended as well to RESPs and RDSPs.

The TFSAs themselves, when they were introduced, never allowed somebody to do that because of the obvious anti-avoidance concerns, and—

● (1640)

Hon. Pierre Poilievre: To go back to the RDSPs, can they be invested in private corporations right now?

Mr. Trevor McGowan: No. I think you still have to have a qualified investment. That's just an example of the—

Hon. Pierre Poilievre: Sorry. Just clearly speaking, though, can the proceeds of an RDSP be invested in a private corporation right now?

Mr. Trevor McGowan: No, I don't believe that they can.

Hon. Pierre Poilievre: Then that scenario you described at the outset, whereby someone would use an RDSP to invest in a private corporation and then use the RDSP as a vehicle to avoid paying tax on returns, is impossible. That's not possible if you can't invest in a private corporation through an RDSP in the first place.

Mr. Trevor McGowan: I don't know that it's not possible; rather, if it happens, certain consequences arise, and you have a penalty.

Hon. Pierre Poilievre: Okay, but that's already the case.

Mr. Trevor McGowan: Right, but the penalties being introduced here are different and I think in many ways stronger. If you have the advantage tax, income on a prohibited investment is subject to a 100% tax, which is very strong.

I can provide a more detailed comparison, if you'd like, on the differences between the current and proposed schemes.

Hon. Pierre Poilievre: I worry whenever we have officials who come here with new rules and can't tell us why we need the rules. I become very concerned that we're imposing costs and restrictions on people without any purpose, so I would appreciate some explanation as to how these anti-avoidance schemes could even occur, given that the practice you described at the outset is already forbidden under the existing law.

Moving on to the exploration expense changes, you said that in cases where an exploration for oil well development is successful, then the expense associated with that exploration would be deductible at a rate of 30%, whereas if it's unsuccessful, it would be deductible at a rate of 100%. Did I understand that correctly?

Mr. Randy Freda: In terms of exploration, the measure deals with how discovery wells would be treated. They would be treated as development wells at 30%, unless they're proven to be or deemed to be unsuccessful. In that case, they would then become exploration expenses, which are deductible at 100%.

Hon. Pierre Poilievre: So the answer is yes?

Mr. Randy Freda: I guess what I'm trying to get at is.... I think it might be the same. Those discovery wells will be treated to start off with as development expenses at 30%. You don't necessarily know whether they're going to be successful or unsuccessful at that point in time, but if a discovery well proves to be unsuccessful, then it could become exploration and it would be deductible at 100%.

Hon. Pierre Poilievre: I still think that's a yes.

Mr. Randy Freda: Okay.

Hon. Pierre Poilievre: I'll go back to the point. If a company invests $100,000 to explore whether there is oil underneath the prospective well, and that well turns out to be a dud, then they can deduct 100% of the costs in one year.

Mr. Randy Freda: Correct.

Hon. Pierre Poilievre: If it turns out that when they invest $100,000, the well turns out to be a cornucopia of oil, then they can deduct that over three and some-odd years at 30%.

Mr. Randy Freda: Yes.

Hon. Pierre Poilievre: What if they don't figure out whether it's a dud or whether they've struck black gold for five years?

Mr. Randy Freda: In terms of the deeming rules, that's where it gets into the idea of “to deem to”.

One is that if you prove that you're unsuccessful, it's immediate once you do that. The second is that if there's no—

Hon. Pierre Poilievre: But what if it takes some time to figure out whether the well is going to produce oil?

● (1645)

Mr. Randy Freda: There are two sides to that.

The first is that if they haven't produced anything within two years, then it's deemed to be unsuccessful. Let's say they end up eventually producing something from it; it's deemed to be—

Hon. Pierre Poilievre: If in the second year they realize they have a dud, is it the case that they then have to go back a year and write off an expense that they were not originally allowed to write off in an earlier tax year, which will now be closed out?

Mr. Randy Freda: They could do that, or it could become something they can write off right there, for going forward.

Hon. Pierre Poilievre: It just seems as though again there's another rule that's going to add complexity, particularly to small businesses. This tax measure relates to small business. It's available only up to a million dollars, for smaller exploration companies, the juniors in the oil and gas sector, and you're now telling them they have to wait three years before they can write off an exploration cost for one year.

Mr. Randy Freda: To clarify, there are two measures. When you said “exploration” in a general sense, I then went with the idea that you were talking about the discovery well measure.

There is another measure with regard to reclassification of Canadian development expenses for flow-through share investors. That's a different measure altogether, the one that's for smaller companies. In the normal context, that measure is for a development expense; therefore, it would normally be deductible at only 30% for that company, on a declining-balance basis. That company, on those particular measures, can essentially reclassify that. We would know it's a development expense, normally deductible at only 30%, but we would let them reclassify it as an exploration expense—which, in any other context, would not be considered an exploration expense —and allow it to be deducted at 100%, but it's not actually the company, in that case, that's deducting it at 100%.

Hon. Pierre Poilievre: It's the shareholders.

Mr. Randy Freda: Yes, and in particular a shareholder that buys a flow-through share. Basically, with that flow-through share they get a share, but they also get access to the deduction. Let's say it was a development expense of $100—

Hon. Pierre Poilievre: Right, but for a successful oil well exploration, with a flow-through arrangement, how much can they write off under the status quo?

Mr. Randy Freda: With a successful flow-through share arrangement?

Hon. Pierre Poilievre: For successful exploration of an oil well with a flow-through share, how much can they write off of the expense in year one, today, under the status quo?

Mr. Randy Freda: In that context, it doesn't matter whether it's successful or not.

Hon. Pierre Poilievre: Okay, perfect. Got that.

Now how much would it be?

Mr. Randy Freda: For the actual investor, let's pretend it's $100 and it gets flowed out to them at $100. The investor would be able to write off $100.

Hon. Pierre Poilievre: Right.

What you're saying now is that if it's a successful exploration of an oil well, that shareholder will only be able to write off in the future, under this change, $30.

Mr. Randy Freda: No, because.... That's where I'm saying the success....

What we're talking about when we're talking about that measure is that it was a development expense. It wasn't an exploration expense. It's only by sort of being designated as exploration.... It's basically put into the class. Let's put it that way. These development expenses that would normally be called Canadian development expenses at 30% are deemed essentially to be Canadian exploration expenses, which are deductible at 100%.

That's why they are able to deduct them at 100%: it's because we deem it. It's not whether it was successful or not; it was a development expense that we deemed to be an exploration expense deductible at 100%. That's what's being impacted. That's why I'm saying it's not really whether it's a success or not on that issue.

Hon. Pierre Poilievre: But under the proposal, they'll only be able to claim 30%.

Mr. Randy Freda: Correct. That development expense that's normally 30% was deemed to be a Canadian exploration expense, and they'd be able to deduct it at 100%. You're right that they would only be able to claim a development expense at the 30% rate.

● (1650)

Hon. Pierre Poilievre: That's regardless of whether they're successful or not.

Mr. Randy Freda: It's regardless. It's not a success thing.

Hon. Pierre Poilievre: For my final question, how much money is lost through the deferral of taxes because of the use by professionals of the billed-basis accounting?

Mr. Trevor McGowan: The estimates that were included as part of the budget were $425 million over the horizon mentioned in the budget. That, as I said, was based upon a two-year deferral, so it would be extended beyond the cut-off date of 2021.

Hon. Pierre Poilievre: You're telling me that every two years, professionals are saving a total of roughly $450 million by paying tax on billings in the year that they are actually received?

Mr. Trevor McGowan: No.

The elimination of the deferral, which would bring into income all the deferred income, would total $425 million, but that would be once there's a move to an accrual system. You'll see in the budget materials that there are no revenue projections beyond the 2019-20 year. Of course that would be later under the revised proposals. I don't have the revised numbers with me, but with the phase-in period going from two years to five years, the revenues in each year would of course be lower and the amount of time before it goes to nil would be longer, but—

Hon. Pierre Poilievre: Now, can you just tell me why it goes to nil?

Mr. Trevor McGowan: It's because it's a timing question.

Hon. Pierre Poilievre: Right.

Mr. Trevor McGowan: It's just dealing with the deferral.

As I said—

Hon. Pierre Poilievre: I guess what I'm getting at here is that if it's just a timing question, the professionals in question are not avoiding paying tax; they are paying it a year later, at worst. That's by virtue of the fact that they're paying it in the year they actually receive their billings, as opposed to in the year they did the work. Is that right?

Mr. Trevor McGowan: It's a deferral of taxes, not an absolute savings.

Hon. Pierre Poilievre: Right, so what problem are we trying to solve here?

Mr. Trevor McGowan: It's a—

Hon. Pierre Poilievre: It seems sort of punitive. You know, “You're paying your tax next year instead of this year. We're going to go get you, because accrual accounting says you have a receivable on your book in the year you did the work rather than the year you got paid. We believe in accrual accounting, so pay up, even if you don't have any money to pay with.”

Mr. Trevor McGowan: The time value in deferrals is quite valuable. A significant portion of tax planning is aimed at achieving tax deferrals rather than absolute savings, so I'm not certain that a deferral represents a “nothing”.

Hon. Pierre Poilievre: What does it represent, then? What is the monetary value of this deferral right now? Does your department have any estimate?

Mr. Trevor McGowan: Well, it would bring into income over the time horizon, $425 million—

Hon. Pierre Poilievre: That's not the question. That'll move tax liabilities forward. It won't increase the amount of tax paid. The $400-and-some-odd million you just listed are not additional revenues that the Government of Canada will get over time, but revenues being pulled out of future years into present years, so what is the monetary value of the deferral you're eliminating with this measure?

Mr. Trevor McGowan: If you're asking what the anticipated revenue increase is after the end of the phase-out period, you can see from the table included in the budget that it's nominal, less than $500,000 a year.

Hon. Pierre Poilievre: Is it $25,000?

Mr. Trevor McGowan: It's less than $500,000.

Hon. Pierre Poilievre: It's less than $500,000 a year? That's what the government spent since you and I started this conversation.

It just seems that we're going to tax people on money they haven't actually received and might never receive. We're going to create the administrative nightmare of having to go back to CRA when their client defaults on a payment to say, “Listen, CRA: I know I paid you tax on that money I never made. I can now confirm I'm never going to make it. Can you please give me a refund on that non-existent income?”

All so the Government of Canada can raise a half a million bucks?

● (1655)

The Chair: I don't think the officials can answer that part.

Hon. Pierre Poilievre: That's all.

The Chair: Okay.

I know there are a lot of people here from different departments. I would say that we will not get beyond part 3, and so anybody who was planning to testify after part 3—and parts 3 and 4 have the same witnesses—is released. We'll be talking to you another day.

Mr. Dan Albas: I want to bring up division 2 of part 5, the Asian Infrastructure Investment Bank Agreement Act.

The Chair: No, we'll have to do it another day.

Mr. Dan Albas: Okay.

The Chair: Gentlemen, we still need you. We still have three more questioners on part 1. I'm just saying that some officials who would have to wait might as well be released and head out, because we're going to have to call you another day, which is not unusual at this committee. I thank you for coming.

I have on my list Mr. Dusseault, Mr. Fergus, and Ms. Khera.

[*Translation*]

Mr. Pierre-Luc Dusseault: Thank you, Mr. Chair.

Thank you to the witnesses for being here today.

My question is about clause 30. This won't be the first time you'll hear me bring this up: retroactive measures. In this case, the retroactive period goes back to October 24, 2001. It always worries me when retroactive amendments are made to the Income Tax Act.

Would you explain the change being proposed in clause 30, in relation to trusts and foreign affiliates? I'm trying to understand the reason, or rationale, for the amendment coming into effect retroactively on October 24, 2001, in other words, 16 years ago.

[*English*]

Mr. Trevor McGowan: Sorry, is this clause 30 of the bill?

Mr. Pierre-Luc Dusseault: Yes.

Mr. Trevor McGowan: Right. That's probably the reference in subclause 30(1). Part of the package of technical amendments that were released in September 2016 are intended to be technical and housekeeping measures. Many of these correct oversights and mistakes made in past bills.

In this case, the name “Canadian Payments Act” had changed several years ago, whenever the amendment was effective. When the name of the reference statute was changed, the reference in the tax act was not changed to follow it. It doesn't have a substantive effect, but it corrects the incorrect reference back to when the change ought to have been made.

[*Translation*]

Mr. Pierre-Luc Dusseault: It doesn't necessarily have any tax impact, then. It's simply making a correction that should have been made previously.

[*English*]

Mr. Trevor McGowan: Yes, that's correct.

[*Translation*]

Mr. Pierre-Luc Dusseault: Very well.

I'll leave it there for now, Mr. Chair. I know the clock is ticking.

[*English*]

The Chair: For committee members to think about between now and half past five, our options for fitting in two or three more hours next week are Monday afternoon, Tuesday morning, or Thursday morning. If you have any special thoughts on where you'd like to be on those days, I'd like to hear them.

● (1700)

Mr. Dan Albas: Perhaps what we can do is have members identify which sections they would like to have extra scrutiny on and then just invite those.

The Chair: I think we do need to hear the explanation, though, on each section. For most of them, we've asked the officials to be fairly short on those explanations.

Mr. Dan Albas: I noticed the parliamentary secretary wants to ask questions of officials. However, I think she can ask for those things at other times as well. This is a chance for parliamentarians who do not have access to officials on a regular basis to be able to ask questions.

Rather than hold up meetings and cancel schedules, we've tried, especially on the opposition, to work with the government on the scheduling of the BIA. We've been very co-operative thus far. I would hope you would attest to that, Mr. Chair.

The Chair: Yes.

Mr. Dan Albas: Perhaps what we could do is focus on those things. I do realize that we want to hear testimony on everything, but there's a bit of ragging the puck. A lot of it goes along with that as well.

The Chair: If you have a suggestion, let me hear it. In the case of the parliamentary secretary, this particular parliamentary secretary—the two of them, actually—there are departments that she's not the parliamentary secretary for here, so I think she certainly can ask a question. That's her right.

Go ahead, Ms. O'Connell.

Ms. Jennifer O'Connell: I had suggested this I think at the subcommittee meeting, but the officials have to come back when we do clause by clause anyway, and will be available for questions. I agree with Dan in the sense that if there are any sections that members absolutely want questions on before making amendments, there is always that opportunity when we do clause by clause, since officials have to appear and be available for questions.

Can we find that compromise and not bring everyone here unnecessarily?

The Chair: We'll give that some thought.

We're going to Mr. Fergus.

Mr. Dan Albas: If I could make a suggestion, let's do Monday, then, after question period.

The Chair: Okay. That's where we'll go.

Mr. Fergus, you have a question. You're on deck for questions.

[*Translation*]

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

Thank you to the officials for being here.

I'd like to pick up on bill-based accounting. I'm not a lawyer, and I'm certainly not an expert on tax law. That said, I'd like to make sure I understand the reasons and general principle behind these amendments.

I'd appreciate it if you could keep your answer to no more than one or two minutes, as I have a few more questions about this. Could you explain why these amendments are necessary? What problems are they meant to fix, and how will these amendments do that?

[*English*]

Mr. Trevor McGowan: One of the fundamental aspects of the general tax rules and tax systems—this comes from Supreme Court decisions in IKEA and Canderel—is that tax rules ought to provide taxation on the truest picture of your income. To that end, the basic scheme of the act, currently, for a large majority of taxpayers, requires accrual accounting, which means that in any year, you pay tax on the amount that you earn in that year.

Back in the 1980s, as I said, there was a general shift in the tax rules, away from what we call billed-basis accounting, whereby you include something in income when you send out the bill, to this more comprehensive, truer picture of income, the accrual system. Exclusions were made back then for certain designated professionals. Of course, lawyers are on the list, but there were also doctors, chiropractors, I think maybe veterinarians, and others.

However, the reasons for excluding them from the general rule that provides the truest picture of income no longer exist right now. Therefore, as part of the tax expenditure review, it was determined to be inappropriate to provide for continued access to this tax deferral, rather than applying the general rules that apply to other taxpayers. This could include other professionals, such as engineering firms and the like, It's instead of having two sets of rules, with a favoured category and then the general one.

● (1705)

[*Translation*]

Mr. Greg Fergus: The conditions have changed. That seems to be the crux of the problem, given all the questions I'm hearing from members on all sides, government and opposition members alike. My colleagues don't appear to be convinced that the conditions and landscape have changed so much so that this exception is no longer warranted and should come to an end.

[*English*]

Mr. Trevor McGowan: As I said, this proposed measure arose in the context of the tax expenditure review, a comprehensive review of the system of tax expenditures we have in the act, looking at not just tax credits but also at preferential deferral systems of the kind we have here.

Outside experts were brought in, and this was started well over a year ago. The decision was taken that with the different regulatory atmosphere and the perhaps increased sophistication in accounting tools, it was an appropriate time to make this change and to eliminate that preferential deferral regime for the designated professionals.

[*Translation*]

Mr. Greg Fergus: I'd like to focus on lawyers, since the impact on them has come up.

My fellow members from all parties have brought up the issue of deferred billing.

Situations in which lawyers defer sending out their bill do arise, for example, when a court case has not been settled, a decision is pending, or it was agreed that the client would be billed only in the case of a favourable outcome. Those strike me as good reasons to keep the preferential treatment in place. Am I wrong?

[*English*]

Mr. Trevor McGowan: As I said, it exists as a separate regime for the designated list of professionals, and it's important to keep in mind that the general rules apply not just to industry generally but to other classes of professionals who for many years—decades, even—have managed to make estimations of what the fair market value of the work in progress is and have been able to work within those rules.

There's guidance both from international accounting standards and the Canada Revenue Agency on how to appropriately apply accrual accounting to fairly specific fact situations. It essentially puts these excluded groups on the same playing field as others who have been able to comply with the rules for quite some time.

[*Translation*]

Mr. Greg Fergus: Are there countries comparable to Canada that have done away with this type of practice and preferential regime?

● (1710)

[*English*]

Mr. Trevor McGowan: I'm not aware of any list of countries that use the accrual basis for their taxation. I can ask, but I simply don't know the answer to that question.

[*Translation*]

Mr. Greg Fergus: Thank you, Mr. Chair.

[*English*]

The Chair: Okay. Thank you.

I want to say that the standing orders changed, effective September 18, so that parliamentary secretaries are now non-voting members of the committee.

Ms. Khera is next.

Ms. Kamal Khera (Brampton West, Lib.): Thank you, Mr. Chair, and I appreciate your giving me the opportunity to ask this question.

Could you elaborate on adding the nurse practitioners to the list of medical practitioners who can certify the impacts of impairments for disability tax credit applicants? This is extremely important for many Canadians who don't have access to family doctors or medical doctors. You mentioned that it goes beyond the disability tax credit. Could you elaborate on that?

Mr. Pierre Leblanc: In budget 2017, there was a measure on the disability tax credit to add nurse practitioners to the list. That was legislated as part of the first Budget Implementation Act. What's being added here is an extension of that. There are certain other provisions in the Income Tax Act whereby specified medical practitioners can certify different things.

Let me give you an example. For the child care expense deduction, normally it's the lower-income spouse who's eligible to claim the deduction, but where the lower-income spouse has a severe impairment, then in that case the higher-income spouse is able to claim the child care expense deduction. It's a question of who can certify that status, so nurse practitioners will be added. It's taking that logic and extending it to some other parts of the income tax system.

Ms. Kamal Khera: That was all.

The Chair: Okay. Thank you.

That's it, that's all, we're all in?

You have one more question, Mr. Albas, or however many you have.

Mr. Dan Albas: I wanted to talk a little about the charitable giving of land. This is laid out under "Ecological gift—tax payable", where in subclause 73(1) section 207.31 of the act is replaced in proposed subparagraph 207.31(1)(a)(ii) to read "in the opinion of the Minister of the Environment, or a person designated by that Minister". Are we basically allowing the Minister of Environment to designate ecologically sensitive lands?

Mr. Pierre Leblanc: That's how it works now. The program is administered by the Department of the Environment and Climate Change. It's the minister who has responsibility, so she's responsible for designating on a gift-by-gift basis. If it's donated to a registered charity, such as the Nature Conservancy of Canada, she basically certifies that it meets the purposes and goals of the measure. The idea is to apply that same logic to municipalities and similar bodies.

Mr. Dan Albas: That seems reasonable to me.

In regard to the closing of so-called loopholes, I think you might want to amend your use of language in the future. I think it's "closing advantages surrounding the capital gains exemption on the sale of a principal residence". I've had a number of people who are quite concerned. For this year's tax, people had to note if they sold their principal residence, and I've had people ask me, "Where's this going?" Can you go over that one particular area again, and the page it's on?

Mr. Pierre Leblanc: The key is that it's a very important measure, the capital gains exemption for principal residences. It's something that had strong support. The idea is to make sure it's being used by the people for whom it's intended—that is, Canadian residents living in principal residences. The idea is to be better able to screen out non-residents who, through certain provisions, have been able to claim the principal residence exemption when that was not intended. It's an important part of the tax system, and the idea is to make sure that it continues to work well.

● (1715)

Mr. Dan Albas: Can you give me an example?

Mr. Trevor McGowan: The principal residence exemption gives you an exemption on the sale of your home, one per family, and it's limited to Canadian residents. If you sell your home partway through the year, you'll most likely buy a new home if you're moving, so you will have had two principal residences in that year. As I said, you can only have one principal residence at a time. To get around that problem, where you don't want to preclude the principal residence exemption just because you moved, the rules give you a plus-one year. They say that we'll take a look at when you own the house and we will give you a year on it to take into account situations where you move.

A technical issue arose when a non-resident engaged in certain planning and bought and sold a Canadian house or real property. There was an argument that they could claim the principal residence exemption for that one year just because of that plus-one year that was given in order to make sure the rules worked for Canadians who moved from Toronto to Ottawa, let's say. That's an example of what might be called a loophole.

Mr. Dan Albas: Is there any loophole or “advantage”—I am trying to learn the newspeak here—that would apply to a Canadian citizen?

Mr. Trevor McGowan: I—

Mr. Pierre Leblanc: No, not to residents of Canada.

Mr. Dan Albas: This is only for non-residents?

Mr. Pierre Leblanc: That's the idea. Another example would be non-residents using Canadian resident trusts as a way to access the principal residence exemption in a way that wasn't intended.

Mr. Dan Albas: Okay. This is again someone who is a non-resident who could use other entities to purchase the property and claim it that way.

Mr. Trevor McGowan: Citizenship doesn't tend to matter for Canadian income tax purposes. It's residency.

Mr. Dan Albas: Yes, a resident or—

Mr. Trevor McGowan: There are changes relating to the use of trusts to claim the capital gains exemption, which essentially restrict it to certain classes of trusts, to spousal trusts and the like, and those, just to be clear, could prevent multiplication of principal residence exemptions as between Canadian residents.

Certainly the measure I discussed with a plus-one year and that loophole is purely.... Also, a lot of the trust planning is targeted at non-residents, at non-residents coming in and buying Canadian property through a Canadian resident trust, but I don't want to say there's no way that some of the trust changes can't affect Canadian residents.

Mr. Dan Albas: Fair enough.

The Chair: Thank you, gentlemen, for spending an hour and 20 minutes with us, or longer than that. It was an hour and 50 minutes.

We'll call up the witnesses on part 2 and see if we can at least get the summary done. Maybe we can get it all done.

Thank you, Mr. McGowan and Mr. Freda. It was quality time.

Now we are looking at part 2 in terms of amendments to the Excise Tax Act and to related legislation, the GST and HST measures.

With us are Mr. Mercille, who is the senior legislative chief, sales tax division, Finance Canada, and Mr. Achadinha—I might not have pronounced that correctly—who is the legislative chief, sales tax division, tax policy branch.

Welcome. The floor is yours. Thank you for your endurance.

● (1720)

[*Translation*]

Mr. Pierre Mercille (Senior Legislative Chief, Sales Tax Division, Tax Policy Branch, Department of Finance): Good afternoon.

Part 2 of the bill makes changes to the GST and HST. The amendments appear in clauses 106 to 164.

I'm going to describe the measures in the order they appear in the summary, with only one exception, given that two of the measures are more closely linked.

[*English*]

I want first to say that all the amendments in part 2 of the bill are technical in nature and generally correct small deficiencies to ensure that the rule applies as intended. All of the measures in part 2 of the bill, except the PSB rebate measure, were released for consultation for the first time in the summer of 2016. These measures have also been confirmed in budget 2017, and they were re-released for consultation in the summer of 2017 with a small number of improvements. No request for amendment was received from stakeholders during the second consultation.

The first measure makes technical amendments to the GST/HST pension plan rules. Existing GST/HST rules ensure that pension plans receive the same GST/HST treatment whether pension expenses are incurred by an employer participating in a pension plan or directly by a pension trust or a pension entity of the pension plan.

These rules also generally provide a 33% GST rebate to pension trusts and pension corporations in respect of their expenses and their expenses that are deemed to have been incurred. These rules are fairly sophisticated and came into force relatively recently, in 2009. Certain small deficiencies and mistakes had been identified over the years by stakeholders and internally by the government. The proposed measure makes technical amendments to these GST/HST rules to clarify certain points, correct technical deficiencies or errors, and simplify compliance.

The second measure I'm going to talk about deals with GST/HST treatment of master trusts and master corporations. What master trusts and master corporations do is hold and invest funds of individual pension plans, and planned pension plan corporations too. They do that in order to diversify the risk and reduce the costs. These amendments ensure that the same GST/HST treatments apply to pension plans and related expenses whether the funds of the pension plan are invested directly in a trust or a corporation of a single pension plan, or whether the money is being invested in a master corporation or a master trust.

The third measure that I'm going to talk about, and it's part of the first item in the summary, is a measure to make technical amendments to the GST/HST rule for financial institutions.

Financial institutions are subject to special GST/HST rules, and this is due to the complexity of the financial service industry. Because financial services are exempt under the GST/HST, financial institutions are generally not allowed to recover, through input tax credit, the tax they pay on expenses they incur to provide those financial services. This is contrary to general commercial activity businesses, where they charge tax on their output but they claim an input tax credit on their inputs.

These rules are fairly sophisticated in certain cases, and technical anomalies are identified from time to time. The measure here makes technical amendments to these rules to clarify certain points and reflect amendments to the Income Tax Act. Concepts of the Income Tax Act are referred to in the Excise Tax Act, and sometimes there's a modification in the Income Tax Act and the Excise Tax Act has to catch up. Also, there are rules to simplify compliance.

The fourth measure, which is the third item on the summary, makes a technical amendment to the GST/HST drop shipment rules. The drop shipment rules help Canadian businesses that sell to non-residents by ensuring that non-resident businesses do not incur unrecoverable GST/HST when they acquire goods in Canada.

● (1725)

The amendments that are made to those rules provide a new tax relief mechanism, and this is in a situation where an existing tax relief mechanism was not functioning for technical reasons. The amendments also extend the application of the drop shipment rules in respect of certain leased goods and generally make technical improvements to those rules.

The next measure relates to municipal transit. Municipal transit services are exempt under the GST/HST. This measure clarifies that the GST/HST exemption for municipal transit service also applies to supply of tickets, passes, and other similar rights entitling individuals to receive municipal transit services. The amendment is proposed to reflect the modern way in which transit services are supplied and paid for, which can often be better characterized as supplies of rights as opposed to supply of service.

In practice, these amendments do not change anything, because they simply codify the ways the CRA has been interpreting relief over the years.

The next amendment would improve the manner in which public service bodies can claim public service body rebates. For the purpose of the GST/HST, public service bodies are entities such as municipalities, schools, public colleges, public hospitals, charities, and substantially government-funded non-profit organizations.

The amendment would provide these public service bodies with an improved flexibility in claiming their rebate of the GST/HST. It would generally allow public service bodies to claim, in a subsequent claim period, a rebate of GST/HST that has been paid in a previous claim period, for a period of up to two years. This is a simplification measure, because it's less burdensome to claim in a subsequent period a rebate that you may have forgotten in a previous period than it is to use the current process, which is to make an amended rebate claim.

[*Translation*]

The last measure in part 2 is a housekeeping amendment to make the legislative provisions governing GST and HST more precise and consistent. The measure does not amend the application of the GST or HST. Essentially, it is meant to make the English and French versions of the act consistent, update references to certain tax-related terms, make changes related to bijuralism, and correct errors, references and other items of that nature.

That concludes my explanation of the measures in part 2 of the bill.

[*English*]

The Chair: Go ahead, Mr. Fergus.

[*Translation*]

Mr. Greg Fergus: Thank you for explaining part 2, Mr. Mercille. I don't think any of it was too controversial.

I would like you to reassure me on one point, though. Did the Quebec stakeholders you consulted have any concerns about the GST on services and supplies provided by transit authorities, for example?

Mr. Pierre Mercille: We consulted twice on the amendments.

Mr. Greg Fergus: Very good.

Mr. Pierre Mercille: After the first consultation, we met with transit authority officials. After the second consultation, no one proposed any changes.

Mr. Greg Fergus: Thank you.

[*English*]

The Chair: Mr. Albas is next, and then Ms. O'Connell.

Mr. Dan Albas: In introducing clarifications and technical improvements to the GST/HST rules applicable to certain pension plans and financial institutions, what is the net cost to the treasury of that measure?

Mr. Pierre Mercille: These are fairly technical. I don't think we have an estimate for that, because certain measures may close potential loopholes while other measures provide further relief. Overall, they likely balance each other.

Mr. Dan Albas: Could you get back to the committee with some sort of estimate?

Mr. Pierre Mercille: It's very difficult to make estimates for those kinds of measures, because we don't have data to make the estimates. These are very technical measures. It's not as if we were relieving a new good or service, where basically we could go to StatsCan and evaluate, based on a survey, the value of something.

● (1730)

Mr. Dan Albas: Paragraph (d) in the summary of part 2 of the bill reads:

> clarifying the application of the GST/HST to supplies of municipal transit services to accommodate the modern ways in which those services are provided and paid for; and

Are you aware of what Innisfil is doing with Uber? The municipality has entered into a contract with Uber to offer certain services. Last year, this government, in their BIA, decided to add Uber. Under measure (d), what is the status of Uber if they are operating as a part of a municipal transit service?

Mr. Pierre Mercille: First of all, Uber is for profit.

Mr. Dan Albas: Yes, but it's a municipal transit service. For example, the City of Penticton has a private operator for their municipal transit service.

Mr. Carlos Achadinha (Legislative Chief, Sales Tax Division, Tax Policy Branch, Department of Finance): "Municipal transit service" is a defined term. Generally, you need to be offering a transit service that is dedicated specifically to providing municipal transit. If you are just a contracted entity, you may not actually be the entity that is doing municipal transit; you may just be the person who is contracted to provide that service.

Mr. Dan Albas: Are you saying that there are certain types of municipal transit services? To me, if a municipality decides to engage with a private contractor to carry out certain functions that are publicly available to all and subsidized by the taxpayers of said area, that would be a public system delivered through a private mechanism.

Perhaps you may want to look into that, because again, last year this government put Uber into a category that meant they had to pay HST.

Mr. Pierre Mercille: I don't know the structure of the city you referred to, but if all of the municipal transit is paid by the municipality—if they pay Uber, including tax, and they pay tax on these things—then the municipality is entitled to a 100% rebate of the GST/HST that it pays.

Mr. Dan Albas: I will let the people of Innisfil know, through their great representative, what you have said today.

The Chair: Do you mean the federal representative?

Mr. Dan Albas: Yes, I mean their great federal representative.

The Chair: Okay. I wanted to be clear on that point.

We have one more question left.

Go ahead, Ms. O'Connell, and then we will adjourn.

Ms. Jennifer O'Connell: Thank you.

I'm following up on the municipal transit as well, but to Mr. Albas' point, in Durham Region Transit we contract out to taxicabs to provide our accessibility transit in some areas of the community where it is not feasible to send an accessible transit bus. We have a long-standing contract, and it's on the books under Durham Region Transit for an offset limit of taxis. That is the transit service.

Mr. Carlos Achadinha: In your particular case, as my colleague mentioned, municipalities are entitled to 100% rebate of the GST they pay. If they pay for a service and they pay GST, they are allowed to get 100% of it back. How a municipality chooses to structure its fares.... The relief has been put in place for municipal transit services, so it's generally characterized by what a municipal transit service is. For example, if you personally were to call a taxicab because you didn't have the availability of municipal transit, that wouldn't be treated as municipal transit.

There are various categories of what is considered municipal transit. It would be for the CRA to make the characterization of what an eligible municipal transit service is.

Ms. Jennifer O'Connell: Right, but it's not the individual who calls the taxi; it's the dispatch, the transit.

Mr. Carlos Achadinha: Again, if they paid tax on that service, they'd be entitled to recover it through their GST/PST municipal rebate.

Ms. Jennifer O'Connell: My question really is around the wording of this measure. I'm confused in terms of what the measure is clarifying. Can the exemption apply regardless of whether the supply of municipal transit is made as a supply of a service or the supply of a right to use municipal transit—for example, through the sale of a pass? Is the exemption on the cost of administering the pass? The individual purchases the pass.

I'm confused by the wording. Can you elaborate?

● (1735)

Mr. Pierre Mercille: The way the exemption worked before was that it was an exemption for a service. If you look at it in a traditional way, you would have a transit service. You would walk onto the bus and you would put change in the machine. It was a direct service.

The way it's mostly done now is through tickets, passes, Presto cards, and those kinds of things. When those cards and tickets are sold to you, the best legal characterization of that is that it is the supply of a right, not the supply of a service. It's a legal nuance. It's not taxpayers who raised it for us; it was CRA. They asked us to be more precise in terms of the way the policy should be interpreted, to say whether it is the supply of a right or of a service.

Ms. Jennifer O'Connell: All right. Thank you.

The Chair: With that, thank you, gentlemen. That will conclude part two, and you'll be back for part three on Monday at 3:30.

For members, on the earlier discussion on divisions and parts, could you send the parts or divisions you'd like to ask questions about, or hear the summary of, to the clerk by noon tomorrow? We'll give those items priority, and then if there's time we'll hear the summary at the end.

A meeting will be added for Monday from 3:30 to 6:30.

With that, the meeting is adjourned.

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