



Montréal, 25 July 2017

Standing Committee on Finance
House of Commons
Ottawa

Re: Participation in 2018 prebudget consultations

Dear Committee members:

In the context of the current prebudget consultations, and on behalf of the collective Échec aux paradis fiscaux,¹ we would like to submit recommendations drawn from our report, “Des solutions à notre portée,” which was written by researcher Alain Deneault, in collaboration with professor of tax law, André Lareau.

These seven concrete recommendations demonstrate that the Government of Canada has the capacity to effectively combat tax havens and reduce the impact of these capital outflows on our public finances. They also show that there is a way to resolve the dilemma of *more taxes on individuals* versus *fewer public services*.

We will briefly outline our recommendations with a view to respecting the guidelines for this consultation. The report itself provides further details on each recommendation.²

1- Amend voluntary disclosure mechanisms to include penalties (currently non-existent), along the lines of the American *Offshore Voluntary Disclosure Program (OVDP)* and *streamlined program*

The Canada Revenue Agency and Revenu Québec allow taxpayers who have not disclosed the information required by the *Income Tax Act* (Canada) or the *Taxation Act* (Quebec), or who have

¹ The collective Échec aux paradis fiscaux is composed of the following organizations: Alliance du personnel professionnel et technique de la santé et des services sociaux (APTS), Association québécoise pour la Taxation des Transactions financières et pour l'Action Citoyenne (ATTAC-Québec), Association des retraitées et retraités de l'éducation et des autres services publics du Québec (AREQ-CSQ), Caisse d'économie solidaire, Centrale des syndicats démocratiques (CSD), Centrale des syndicats du Québec (CSQ), Fédération autonome de l'enseignement (FAE), Fédération étudiante collégiale du Québec (FECQ), Fédération interprofessionnelle de la santé du Québec (FIQ), Fédération des travailleurs et travailleuses du Québec (FTQ), Les amis de la Terre de Québec, Secrétariat intersyndical des services publics (SISP), Syndicat de la fonction publique et parapublique du Québec (SFPQ), Union des consommateurs, Quebec Student Union.

² The full report is available on the collective's website at: <http://www.echecparadisfiscaux.ca/paradis-fiscaux-des-solutions-a-notre-portee/> [French only].

not filed all their information returns, to make a voluntary disclosure under certain prescribed conditions. If the disclosure is accepted by the revenue agencies, the taxpayer will only be liable for unpaid taxes and interest on the amount owing. No penalty will be imposed on the taxpayer, and the taxpayer will not be subject to criminal proceedings for failure to respect his or her obligations. In most cases therefore, a person who has evaded taxes, even if he or she has been doing so illegally for years, does not run any risk of monetary penalties or imprisonment if the violations are disclosed before the tax authorities have commenced an audit process.

The Canadian government could reform this voluntary disclosure mechanism today with a view to hindering the transfer of assets to tax havens.

We therefore recommend that Canadian and Quebec voluntary disclosure procedures more closely follow the example of American programs (OVDP and the streamlined program). Voluntary disclosures should be accompanied by penalties ranging from 0% to 30% depending on the facts, the source of the income, the taxpayer's conduct and the circumstances associated with non-disclosure. This would encourage more disclosure of income, which tends to increase anyway.

A six-month transition period would help ensure smooth implementation of the new program. These measures would be particularly effective against individuals who fraudulently hide their assets, but would not address the issue of companies that engage in legal tax avoidance.

2- Participate in multilateral agreements for the automatic exchange of tax information

Given the questionable effectiveness of the information exchange mechanisms provided for in tax treaties and information exchange agreements, we recommend that Canada actively participate in the international drive to establish multilateral automatic information exchange agreements that authorize signatory countries to exchange information without a request being made by the country of origin. Such a mechanism would be an outgrowth of what is currently provided for in the automatic information exchange agreements that have been concluded between several countries of the European Union, as well as in the American FATCA program (Foreign Account Tax Compliance Act approved by President Barack Obama in 2010), which allows the U.S. Treasury Department to collect information on the foreign-held investments of American residents. To date, several countries have reached multilateral agreements to share the information that is sent to American tax authorities among themselves. The Canadian government has already committed to providing the American government with the information required under FATCA, and it should therefore now join existing networks created for purposes of multilateral agreements on information sharing.

3- Remove the tax advantage provided for in tax information exchange agreements

In ratifying multiple tax treaties and information exchange agreements with tax havens, Canada is facilitating the transfer of capital out of the reach of tax authorities. In 1979, Barbados adopted the Offshore Banking Act and the International Business Companies Amendment Act. These measures allowed foreign companies to create entities on the island whose tax rates were capped at 2.5%. The following year, 1980, during the short reign of Joe Clark's Conservative Party, the Government of Canada signed a controversial treaty to avoid double taxation. This treaty, which has never been challenged by subsequent governments, continues to enable Canadian businesses to transfer to Barbados assets on which they have paid hardly any taxes, and then to repatriate them to Canada tax free. In particular, the agreement encourages the tax avoidance technique known as "transfer pricing," notably with regard to property rights on trademarks, which are notorious for circumventing market pricing rules.

Today, the Canadian government is discreetly increasing this type of advantage for businesses.

When tax havens sign tax information exchange agreements (TIEA), our government uses its tax regulations to allow Canadian companies to use a ploy similar to that which it makes possible in Barbados, i.e., to register assets there and then transfer them to Canada tax free once they are in the form of dividends. There are tax havens among the signatories to such agreements, including: Anguilla, the Bahamas, Bermuda, the Cayman Islands, Dominica, Saint Lucia, the Dutch Caribbean, Saint-Vincent and the Grenadines, San Marino, Saint Kitts and Nevis and the Turks and Caicos Islands.

We recommend abolishing the tax benefit that allows corporations resident in countries with which Canada has signed a TIEA to distribute their profits from active businesses as tax-free dividends, for the benefit of their Canadian parent company. To that end, we recommend that the definition of “designated treaty country” in subsection 5907(11) of the *Income Tax Regulations* be amended to include only countries or territories with which Canada has entered into a comprehensive agreement or convention for the elimination of double taxation, and not those with which Canada has entered into a TIEA. This amendment would provide for significantly reducing the opportunities for tax optimization that the Canadian government has made possible by signing TIEAs in their current form.

4- Review certain tax agreements

We recommend a review of general agreements for eliminating double taxation that have been signed with countries where personal and corporate tax rates are zero, or close to it, for certain types of revenue or corporation.

5- Amend the definition of “designated treaty country” in subsection 5907(11) of the *Income Tax Regulations*

We recommend that certain corporations that would be covered by this regulation, including the Barbados International Business Companies, be deemed not to be resident of a designated treaty country. This would mean that when the tax treatment accorded by a country, notably Barbados, is considered inadequate, the Minister of Finance of Canada could selectively withdraw the tax advantage associated with designated treaty country from certain companies incorporated in that country, for example, the International Business Companies.

6- Abolish non-taxable income trusts

Through its own legislation, Canada has created entities that have all the appearances of offshore structures. These are known as cross-border income trusts (CBIT) or foreign asset income trusts (FAIT). These trusts enable those holding assets in the mining, gas and oil sectors to avoid all income tax. They effectively transform Canada into a tax haven for the mining industry. This makes Canada a dream tax haven for extraction companies the world over. In fact, any extraction company can come to Canada and create a trust to serve as the official owner of its operations anywhere in the world, as long as the extraction work takes place outside of Canada. In doing so, the company can reduce its tax rate to 0% and redistribute the profits generated where it knows where in the form of dividends in Canada and abroad. Furthermore, if a tax treaty is in effect between Canada and the country where those dividends are headed, the dividends will not be taxed in Canada...

For that reason, we recommend the abolition of cross-border income trusts and any structure that provides similar advantages.

7- Join the *Base Erosion and Profit Shifting (BEPS)* initiative of the Organisation for Economic Cooperation and Development (OECD)

We recommend that the Canadian government actively participate in the BEPS project, that it act as a leader among OECD countries, and that along with other member countries, it rapidly implement the OECD recommendations in order to halt the erosion of the tax base.

In closing, in addition to the above recommendations, we invite the members of the Standing Committee on Finance to consult the report of the Quebec National Assembly's Committee on Public Finance³ on the phenomenon of tax havens. We encourage you to draw inspiration from their work as you develop your own recommendations.

In summary, we would like to encourage the federal government to be more proactive in fighting tax havens, through active participation in multilateral dialogue and serious efforts to strengthen its own legislation. To that end, the next budget should include concrete measures such as those we are proposing today.

On behalf of the members of the collective,

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³ Assemblée nationale du Québec, Fighting the tax haven phenomenon, March 2017, 63 pp. [French only], <http://www.assnat.qc.ca/en/actualites-salle-presse/communiques/CommuniquePresse-4409.html>.