

Minister
of National Revenue



Ministre
du Revenu national

Ottawa, Canada K1A 0A6

AUG 31 2017

The Honourable Wayne Easter, P.C., M.P.
Chair of the House of Commons Standing Committee on Finance
House of Commons
Ottawa ON K1A 0A6

Dear Colleague:

The following information is pursuant to the Government's Response (tabled in the House of Commons on February 22, 2017, pursuant to Standing Order 109) to the Sixth Report of the Standing Committee on Finance entitled "*The Canada Revenue Agency, Tax Avoidance and Tax Evasion*". I am pleased to provide a report on progress in response to recommendations 10, and 11 of the Sixth Report.

The Government would like to thank the Committee for their continued interest and attention to the Government of Canada and the Canada Revenue Agency's (CRA's) efforts to combat tax avoidance and evasion.

Tax evasion and aggressive tax avoidance are complex, global, and continue to challenge tax administrations around the world. The Government of Canada has vowed to crack down on tax evasion and tax avoidance and recognizes the need to take concrete action as well as communicate these efforts to all Canadians. Communicating activities and results will allow the many taxpayers who voluntarily comply with Canada's tax laws to more effectively understand the efforts made toward maintaining the fairness and integrity of Canada's tax system and will deter other Canadians from participating in tax evasion.

Please find enclosed the Government of Canada's report on progress.

Sincerely,

A handwritten signature in blue ink, appearing to read "Diane LeBouthillier".

The Honourable Diane LeBouthillier, P.C., M.P.

REPORT ON PROGRESS: RECOMMENDATIONS 10 AND 11, AS SET OUT IN THE SIXTH REPORT

INTRODUCTION

On behalf of the Government of Canada, on February 22, 2017, the Minister of National Revenue tabled the Government's Response to 14 recommendations contained in the Sixth Report of the Standing Committee on Finance entitled: *The Canada Revenue Agency, Tax Avoidance and Tax Evasion: Recommended Actions*.

The Government of Canada is pleased to provide a report relating to recommendations 10 and 11.

CANADA'S FIGHT AGAINST TAX AVOIDANCE AND EVASION

The following document provides a report on progress for each of the above-noted recommendations. For ease of reference, the individual recommendation and the initial Government Response (as tabled on February 22, 2017) preface each report on progress.

Recommendation 10: *The Minister of National Revenue, by 31 August 2017, establish a regular reporting program for the Canada Revenue Agency that would facilitate the public availability of statistical information about enforcement efforts in relation to tax evasion and tax avoidance schemes. The reporting program should identify the number of investigations leading to convictions or settlements, and associated penalties and interest rates, as well as enforcement efforts in relation to high-risk individuals and corporations.*

Government Response (as tabled on February 22, 2017): *The Government of Canada supports this recommendation. The Government acknowledges that Canadians should be aware of the efforts made by the Government to ensure everyone pays their fair share. The CRA will review its departmental performance reporting and will enhance it with statistical information in relation to enforcement efforts on tax evasion and tax avoidance schemes by August 31, 2017.*

At a minimum, reporting related to tax evasion will include the number of: referrals to criminal investigations, searches, files where charges are laid, convictions, and the associated Court imposed fines and/or jail sentences. As for tax avoidance schemes, reporting will include the number of audits, fiscal impact, referrals to the General Anti-Avoidance-Rule (GAAR) Committee, applications of the GAAR and third-party civil penalties. To complement this annual publicly available reporting, the CRA will continue to seek opportunities to report results via the media and the CRA website.

Report on progress:

The CRA has undertaken a review of its departmental performance reporting and has established regular reporting of statistical information about enforcement efforts in relation to tax evasion and tax avoidance schemes through a dedicated section in the annual Departmental Results Report (DRR). These results will be available to the public within the DRR by the end of 2017.

From the enforcement and tax evasion perspective, the new reporting structure will include:

- Statistical data on the number of audits, referrals to criminal investigations, the execution of search warrant, charges laid, convictions, and associated Court imposed fines and/or jail sentences.
- Statistics on fiscal impact, referrals to the General Anti-Avoidance-Rule (GAAR) Committee, and applications of the GAAR and third party civil penalties

For example, the statistics for the last fiscal year ending March 31, 2017, include:

- 335 cases referred for criminal investigations;
- 123 search warrants executed;
- 32 criminal charges laid under the *Income Tax Act*, *Excise Tax Act*, and/or *Criminal Code*
- 37 convictions;
- \$10 million in court fines and 50.6 years of jail time
- 111,712 audits completed
- \$12.5 B in fiscal impact
- \$44M in third party penalties applied

Since the inception of the GAAR in 1988 to March 31, 2017, there were 1,392 files received for the application of GAAR, with GAAR applied to 1,093 of these files.

The CRA has also revamped its communication approach in relation to its criminal investigations program and tax avoidance. In addition to the DRR, the CRA will update its results throughout the year in a series of newly created web pages dedicated to describing its offshore activities. This initiative was launched in June 2017, with the inclusion of a series of four short videos that raise awareness about the seriousness and consequences of tax cheating. These products were developed to have an impact on the behaviour of taxpayers who may be considering cheating the tax system, and also to raise awareness of different tax schemes that promoters may be marketing.

The CRA will also set up a free subscription service to help interested Canadians stay current on the CRA's enforcement efforts. The enforcement notifications will include information on tax evasion convictions, non-filer convictions, and in some instances the execution of searches and the laying of criminal charges. This will increase awareness of CRA enforcement actions and warn Canadians about potential fraud schemes.

The CRA will continue to seek opportunities to proactively report results through various forms of media as well as the CRA website.

Recommendation 11: *The federal government review the 92 tax treaties and 22 tax information exchange agreements to which Canada is a party in order to ensure that they do not facilitate non-compliance with tax laws, particularly with respect to the secrecy associated with certain jurisdictions and their banking practices. This review should be completed by 31 August 2017.*

Government Response (as tabled on February 22, 2017): *The Government of Canada supports this recommendation. Exchange of information provisions in tax treaties and tax information exchange agreements (TIEAs) enable the CRA to request information relevant to Canada's domestic tax laws within the possession of, or accessible by, the tax authorities of another jurisdiction, in order to better enforce and administer Canada's taxation laws, and to prevent international tax evasion.*

Since 2007, Canada has insisted that all new tax treaties and TIEAs, including revisions to existing tax treaties, include the international standard for exchange of information on request. This standard ensures that bank secrecy and the lack of a domestic tax interest cannot be used as reasons to deny exchanging information.

The Global Forum on Transparency and Exchange of Information for Tax Purposes, of which Canada and over 120 other jurisdictions are members, is currently engaged in the review of exchange of information provisions to ensure that they comply with the international standard for exchange of information on request.

The Government will review the small number of Canada's exchange of information relationships (tax treaties, TIEAs and the Convention on Mutual Administrative Assistance in Tax Matters) that do not fall within the scope of the Global Forum's review to ensure that bank secrecy and the lack of a domestic tax interest cannot be used as reasons to deny exchanging information. The objective of the review will be to identify any exchange relationships that do not meet the international standard for the exchange of information on request.

The review of Canada's tax treaties and tax information exchange agreements will be led by the Department of Finance, in consultation with the CRA, and will be completed by August 31, 2017. The Government will also develop a plan to update any exchange relationships identified as not meeting the international standard by either the Global Forum or the Department of Finance.

Report on progress:

Consistent with Canada's position since 2007, namely, to insist that all new and updated tax treaties and Tax Information Exchange Agreements ("TIEAs") include an exchange of information provision that reflects the international standard, all of Canada's exchange of information relationships (tax treaties, TIEAs and the *Convention on Mutual Administrative Assistance in Tax Matters*) concluded since that time meet the international standard. The international standard explicitly bars jurisdictions from refusing to exchange information on the basis of bank secrecy, or that the requested information is not needed to satisfy their domestic tax laws.

The Global Forum on Transparency and Exchange of Information for Tax Purposes (“Global Forum”) completed its first peer review of Canada in 2011. At that time, seven of Canada’s exchange of information relationships (Austria, Barbados, Belgium, Luxembourg, Malaysia, Singapore and Switzerland) were identified by the Global Forum as not meeting the international standard. In all cases, the deficiency related to provisions in the other jurisdictions’ domestic law (i.e., bank secrecy and/or domestic tax interest)¹ or a restrictive interpretation of the treaty by the other jurisdiction. Canada sought to re-negotiate all seven tax treaties.

Since that time Canada has re-negotiated six of the seven tax treaties identified to explicitly disallow bank secrecy or domestic tax interest as a reason to refuse to exchange information. Five of the six re-negotiated tax treaties are in force and the sixth has been signed but is awaiting ratification by Belgium. Canada has ratified the protocol, and therefore once Belgium sends its notice of ratification to Canada, the updated treaty will enter into force. The seventh tax treaty, the Canada-Malaysia tax treaty, is currently under re-negotiation and Canada will insist on an exchange of information provision that meets the international standard.

It is important to note, however, that each of Canada, Belgium and Malaysia have ratified the *Convention on Mutual Administrative Assistance in Tax Matters* and, as such, Canada has exchange relationships with both countries that meet the international standard.

The Global Forum recently updated Canada’s 2011 peer review and examination of Canada’s exchange of information relationships with other Global Forum members. The review was published on August 21, 2017. In the course of consulting with the Global Forum on its review of Canada, and in light of the completed peer review of Trinidad and Tobago, Canada’s tax treaty with Trinidad and Tobago contains an exchange of information provision that does not meet the international standard. This is as a result of domestic law restrictions in Trinidad and Tobago that restrict exchange of information because of bank secrecy and domestic tax interest.

Further, Canada has seven exchange relationships (tax treaties) with jurisdictions that are Global Forum members but that have not yet been peer reviewed by the Global Forum (Armenia, Ecuador, Egypt, Guyana, Papua New Guinea, Tanzania and Thailand). Canada also has twelve exchange relationships (tax treaties) with non-Global Forum members (Bangladesh, Ivory Coast, Jordan, Kyrgyzstan, Mongolia, Oman, Sri Lanka, Uzbekistan, Venezuela, Vietnam, Zambia and Zimbabwe). Canada has had a limited exchange relationship with these countries. However, with respect to all nineteen countries, the Canada Revenue Agency has confirmed that it has never been denied information requested from these jurisdictions on the basis of either bank secrecy or the fact that they did not need the requested information for domestic tax purposes.

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¹ Some countries require explicit language in a tax treaty to overcome domestic law restrictions regarding bank secrecy or domestic tax interest. Other countries, like Canada, that do not have such domestic law restrictions, can exchange information to the international standard without specific language in the tax treaty regarding bank secrecy and domestic tax interest.

Plan to update exchange relationships that do not meet the international standard (August 2017)

Two of Canada's tax treaties have been identified as not meeting the international standard.

With respect to Canada's tax treaty with Trinidad and Tobago, the Department of Finance intends to contact Trinidad and Tobago before the end of 2017 with a view to renegotiating the exchange of information provision so as to bring it into line with the international standard by explicitly prohibiting bank secrecy and domestic tax interest as a reason to decline to exchange information. This explicit reference is required as a result of domestic law limitations in Trinidad and Tobago.

Further, Canada will continue its re-negotiation of the Canada-Malaysia tax treaty and will insist on an exchange of information provision that meets the international standard.

With respect to the seven countries that are participating members of the Global Forum, we will monitor the outcome of the Global Forum's review of these jurisdictions. (These reviews are scheduled to begin no later than the second half of 2020.) With respect to the twelve exchange relationships with non-Global Forum members, the Department of Finance will continue to work with the Canada Revenue Agency to monitor whether requested information is being provided. Should any of these exchange relationships be identified as not meeting the international standard, the Department of Finance will contact the jurisdiction(s) with a view to negotiating an exchange of information provision that is in line with the international standard