

Written Submission for the Pre-Budget
Consultations in Advance of the Next
Federal Budget

By: Échec aux Paradis Fiscaux collective

Recommendations of the Échec aux Paradis Fiscaux collective:

1. Boost resources to the Canada Revenue Agency (CRA)
2. Increase transparency at the CRA
3. Criminalize serious tax avoidance
4. Restrict, limit and penalize voluntary disclosure
5. Limit out-of-court settlements
6. Follow the Quebec Committee on Public Finance's recommendations to combat tax avoidance more effectively
7. Create a public registry of ultimate beneficial owners
8. Introduce a diverted profits tax and effective taxation of the digital economy
9. Amend tax legislation to tax income and profits reported in a tax haven and repatriated to Canada
10. End tax treaty abuse
11. Support international unitary taxation of multinational corporations

Introduction

According to the July 2020 economic update, the federal government's deficit will be \$343.2 billion this year. This eye-popping figure is due to the unique circumstances created by the coronavirus pandemic and it underscores the urgent need to overhaul Canada's tax system. The fact that Mr. Trudeau and Mr. Morneau are rejecting the idea of fiscal restraint¹ is in itself good news. In the same vein, the government should be aiming for greater tax fairness. To help Canada move forward on the path to rebuilding its finances, the following recommendations are aimed at replenishing the public coffers by tackling tax evasion and aggressive tax avoidance. In our view, with a tax gap of between \$21.8 billion and \$26 billion due to losses to tax havens,² Canada cannot afford to forgo that money and needs to take action. By making tax fairness a priority, it will be possible to recover from this crisis in a way that is conducive to more environmentally, economically and socially sustainable development projects.

Countries like Denmark, Poland, France and the Netherlands have already led the way by denying bailouts to companies operating in tax havens. In this short brief, we lay out proposals for combatting this well-known scourge, which is still being tolerated by the Canadian government.

Since 2011, the Échec aux Paradis Fiscaux collective has been making recommendations to the governments of Quebec and Canada on how to end the tax inequity that benefits multinationals, corporations and individuals that circumvent or exploit current tax laws.

Recommendations

1. Boost resources to the Canada Revenue Agency (CRA)

Since the negotiations with the Organisation for Economic Co-operation and Development (OECD) and the work of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project began, Canada has received a trove of data that requires thorough examination and processing. The CRA needs roughly \$500 million in additional resources to guarantee that it can continue to rigorously investigate all cases, especially those that are most opaque, and go after tax cheats.

¹ Radio-Canada, "Le 'portrait de l'économie' du gouvernement Trudeau attendu de pied ferme," July 8, 2020, <https://ici.radio-canada.ca/nouvelle/1718062/bill-morneau-portrait-economie-canada>

² CRA, "Tax Gap: A brief overview," June 28, 2019, tinyurl.com/yylqefut

2. Increase transparency at the CRA

From 2016 to 2019, the CRA produced documents³ estimating the tax gap created by individual and corporate tax non-compliance. The CRA calculated that the tax gap for 2014 alone was between \$21.8 billion and \$26 billion. Note that this estimate does not include the tax gap created by aggressive tax planning.

We believe that the CRA should calculate the tax gap every year and release a detailed report on it with every budget. This report should also include an estimate of the tax gap created by tax avoidance in Canada and an update on the CRA's progress in fighting against tax havens.

3. Criminalize serious tax avoidance

At present, the legality of tax avoidance and the associated penalties are grossly insufficient to serve as an effective deterrent against using tax havens.

Instead of prosecuting a non-complying taxpayer under [section 239](#) of the *Income Tax Act*, the Crown should prosecute serious tax avoidance cases under [section 380](#) of the *Criminal Code*.

Lastly, the Crown should lay criminal charges not only against non-complying taxpayers, but also against the professionals who advise them. This would deter professionals from recommending abusive tax avoidance strategies to taxpayers.

4. Restrict, limit and penalize voluntary disclosure

The CRA recently restricted access to voluntary disclosure, which is a step in the right direction, but access should be even tightened further. Taxpayers using voluntary disclosure should be subject to significant penalties equivalent to up to 30% of the amount being repaid. In addition, taxpayers should only be allowed to use this exceptional measure once. Lastly, voluntary disclosure should be prohibited outright for cases of serious tax non-compliance.

5. Limit out-of-court settlements

Instead of out-of-court settlements, priority should be given to setting legal precedent and publicizing rulings. These cases would serve as an example to discourage companies and individuals from attempting to avoid taxes.

Various methods could be used to limit out-of-court settlements. Cases relating to tax litigation could be approved by an independent committee where the amount at stake is over \$1 million. Furthermore, settlements should not be allowed for more serious fraud cases.

³ CRA, "Tax Gap: A brief overview," June 28, 2019, tinyurl.com/yylqefut

6. Follow the Quebec Committee on Public Finance's recommendations to combat tax avoidance more effectively

After conducting an in-depth review, the Quebec Committee on Public Finance suggested⁴ that the CRA work with Revenu Québec to automate the exchange of tax information (recommendations 12 and 13) and that it make a number of improvements to its operations in order to enhance transparency and its recovery efforts (recommendations 28, 30, 36, 37 and 38).

7. Create a public registry of ultimate beneficial owners

Follow the recommendations made by the Échec aux Paradis Fiscaux collective in its submission for the public consultation on "*Strengthening Corporate Beneficial Ownership Transparency in Canada*"⁵ and create a public registry of beneficial owners that includes both private companies and trusts.

8. Introduce a diverted profits tax and effective taxation of the digital economy

The promise to introduce a diverted profits tax has been compromised by the slow, uncertain progress of OECD negotiations. How much tax revenue has Canada lost by not having legislation in place on April 1? That is not a rhetorical question. It shows that Canada no longer has the luxury of forgoing these sources of income, which have been eluding it for far too long.

The United States is still impeding these negotiations, but it is high time that Canada asserted leadership by exercising its taxation powers. Profits transferred to tax havens by multinational corporations should be subject to taxation in Canada, and tax authorities should be able to tax those diverted revenues.

The public health crisis has created a business opportunity for the digital economy. With an unprecedented number of Canadians working from home and with the use of various digital economy platforms skyrocketing,⁶ the lax attitude to taxing these platforms cannot continue. It is all the more urgent to act given that the digital sector accounts for a growing segment of our economy. Canada needs to forge ahead with a system for taxing profits generated by the giants of the digital economy while waiting for the OECD to devise comprehensive BEPS solutions.

⁴ Quebec Committee on Public Finance. *Tax Havens: Tax Fairness Action Plan*, November 2017, http://www.finances.gouv.qc.ca/documents/Autres/en/AUTEN_ParadisFiscaux.pdf

⁵ Échec aux Paradis Fiscaux collective. *Pour un registre des bénéficiaires effectifs fort et audacieux*, submitted for ISSED's *Consultation on strengthening corporate beneficial ownership transparency in Canada*, April 30, 2020, tinyurl.com/y2tj6qf7

⁶ TaxCOOP, *Notes Fiscales: GAFAM et top 5 milliardaires canadiens face à la COVID-19: mise à jour*, https://taxcoop.org/wp-content/uploads/2020/07/GAFAM_FR.pdf?fbclid=IwAR03C1xNM9p6akIdhrNH1laRsuxczcm4TjL2Tg--mEFylo4lydzImXLbLWA

9. Amend tax legislation to tax income and profits reported in a tax haven and repatriated to Canada

In some cases, current laws allow a taxpayer to repatriate to Canada income and profits that were reported in a tax haven, without being taxed on that income. The Federal Court of Appeal ruling of April 23, 2020, in the case of *Loblaw v. Canada*⁷ highlighted that anomaly.

We suggest amending the *Income Tax Act*, particularly [subsection 95\(1\)](#), and its regulations, particularly [section 5907](#). These sections set out legal definitions that are used to determine whether a taxpayer with offshore income is exempt from tax. These sections could be amended to ensure that a taxpayer that gets tax relief by using a tax haven is not exempt from tax in Canada.

10. End tax treaty abuse

Canada needs to stop signing non-double-taxation treaties with tax havens. It is a well-known fact that these tax treaties enable companies to take advantage of other countries' lack of taxation so they can get out of paying tax here.

It is time to clean up Canada's tax treaties with other countries and, at the same time, to eliminate treaties that enable wealthy taxpayers and companies to legally avoid paying tax in Canada.

11. Support international unitary taxation of multinational corporations

In BEPS negotiations, Canada should take a leading role in discussions about Pillar Two of the OECD's reform efforts and demand international unitary taxation of multinational corporations, as suggested by the Independent Commission for the Reform of International Corporate Taxation (ICRICT).⁸ It is time to put an end to base erosion and reform international taxation of multinational corporations in order to tax them based on their global profits, rather than the profits reported by each of their subsidiaries. The amount of tax to be paid in each country should be determined using a formula based on the multinational corporation's economic activity in each country. Canada could take the lead in promoting this idea on the international stage.

Conclusion

Canada has a choice to make about its role on the international stage. Will we keep defending the status quo, or will we look to the future? How do we plan to address the record deficits caused by the pandemic? The Canadian government has an opportunity to leave a legacy

⁷ To view the ruling: <https://decisions.fca-caf.gc.ca/fca-caf/decisions/en/469751/1/document.do>

⁸ The ICRICT is proposing a corporate tax rate of 25% worldwide. Independent Commission for the Reform of International Corporate Taxation, *The Global Pandemic, Sustainable Economic Recovery, and International Taxation*, June 2020, report and executive summary available at: www.icrict.com/icrict-documents/the-global-pandemic-sustainable-economic-recovery-and-international-taxation

of bold fiscal policies that will set an example and respond to today's economic, environmental and social challenges. The proposals put forward by Échec aux Paradis Fiscaux are a step in that direction.