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Chair

The Honourable Shawn Murphy

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• (1530)

[English]

The Chair (Hon. Shawn Murphy (Charlottetown, Lib.)): Order, please. I'd like to call the meeting to order and welcome everyone.

Welcome, witnesses.

This meeting is divided in two, like our last meeting. We're going to devote one hour to dealing with chapter 4, "Interest on Advance Deposits from Corporate Taxpayers—Canada Revenue Agency" of the spring 2009 Report of the Auditor General Canada. Then at 4:30 we'll break for one minute and will resume in camera to deal with draft committee reports.

There was originally going to be a motion tabled for debate this afternoon. I understand it's not being moved by the mover at this point in time, so we will devote the full hour to draft committee reports.

Mr. John Weston (West Vancouver—Sunshine Coast—Sea to Sky Country, CPC): That motion won't be...? Could you repeat that?

The Chair: I was informed that it's not being proceeded with.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Yes. For the benefit of members, I will not be moving the motion today. I would defer my moving of it to another meeting and will give notice when I intend to move it.

The Chair: Thank you, Mr. Lee.

The committee is pleased to have a number of witnesses for the first hour. Of course, we have as usual, from the Office of the Auditor General, the Auditor General, Sheila Fraser. She's accompanied today by John Rossetti, assistant Auditor General, and Vicki Plant, a principal.

From the Canada Revenue Agency we have Linda Lizotte-MacPherson. Madam Lizotte-MacPherson was just appointed commissioner about two weeks ago, so I certainly want to congratulate her and wish her all the best in her new duties.

She's accompanied by George Arsenijevic, assistant commissioner, assessment and benefit services branch; and Brian McCauley, assistant commissioner of legislative policy and regulatory affairs.

We have from the Department of Finance Louise Levonian, assistant deputy minister, tax policy branch. She's accompanied by Brian Ernewein, general director, and Gérard Lalonde, director, tax legislation division.

Again, welcome everyone. We have one hour devoted to this. I'm going to proceed to the opening comments from the Auditor General; then we'll go to the Canada Revenue Agency. I understand the Department of Finance does not have opening comments.

I call upon you, Ms. Fraser, to present your opening comments.

Ms. Sheila Fraser (Auditor General of Canada, Office of the Auditor General of Canada): Thank you, Mr. Chair.

We thank you for this opportunity to discuss chapter 4 of our spring 2009 report.

As you mentioned, I'm joined today by John Rossetti, assistant Auditor General, and Vicki Plant, principal, who are responsible for this audit.

In our report on advance deposits by corporate taxpayers, we estimated that the Canada Revenue Agency incurred \$30 million in unnecessary interest costs in each of the three years covered by the audit. This interest was payable to a number of corporations that maintained deposits exceeding in total \$4 billion with the agency for each of the three consecutive years that we audited. We reported that these interest costs were unnecessary because the deposits far exceeded any amount of tax owed or likely to be owed by these corporations.

The mechanics for earning this interest are quite straightforward. The interest rate on overpayments is calculated by a formula in the income tax regulations. The calculation begins by taking the average rate for 90-day treasury bills sold during the first month of the previous quarter. That rate is then rounded up to the next whole percentage, and a further two percentage points are added to the rounded figure. The rate ranged from 5% to 7% during the three years covered by our audit. The rate is adjusted quarterly and is now at 3%, obviously because of current economic conditions.

[Translation]

The Canada Revenue Agency's stated practice is to accept advance deposits only where there is a real risk of reassessment. By making such deposits, taxpayers could minimize arrears interest charges on amounts that might later be determined to be owing.

The agency noticed in 1991 that certain corporations were making advance deposits and leaving large balances in their accounts. It questioned whether they were doing this in order to take advantage of the favourable interest rates. We found that, in general, the agency accepted advance deposits without determining to which tax year the amounts related, and whether there was an anticipated reassessment in the works for that tax year. The agency tried a number of times over the years to refund as many of these balances as possible. However, if a corporation chose not to withdraw its balance, the agency accepted this decision. The agency did not inform the Department of Finance of the challenges it was facing.

In our audit, we recommended that the agency inform the Department of Finance about the issues related to advance deposits, so the department can assess whether a change is needed to the legislation. We also recommended that the agency develop and apply a robust administrative policy for managing advance deposits. The agency agreed with our recommendations.

• (1535)

[English]

We are aware that the Minister of National Revenue wrote to the Minister of Finance on July 7, 2009, to encourage officials in the Department of Finance to review the issues related to advance deposits. The committee may wish to ask the department about the outcome of these discussions and may also wish to ask how the agency has strengthened its own internal administrative practices in response to our recommendations.

Mr. Chair, this concludes my opening statement. We would be pleased to answer any questions that committee members may have.

Thank you.

The Chair: Thank you, Ms. Fraser.

We're now going to turn to Madam Lizotte-MacPherson for the opening comments from the Canada Revenue Agency.

Ms. Linda Lizotte-MacPherson (Commissioner, Canada Revenue Agency): Thank you, Mr. Chair, for the opportunity to present the Canada Revenue Agency's action plan to address chapter 4 of the Office of the Auditor General's spring report. The chapter is entitled "Interest on Advance Deposits by Corporate Taxpayers".

I'm beginning my third week as commissioner of the CRA, so I may draw on the expertise of my senior officials, Mr. George Arsenijevic, assistant commissioner of the assessment and benefit services branch, and Mr. Brian McCauley, assistant commissioner of the legislative policy and regulatory affairs branch.

As you are aware, the CRA agrees with the Auditor General's recommendations. The Minister of National Revenue has made it clear that the CRA's action plan must ensure that when corporate taxpayers make advance deposits, they do so in a manner that is consistent with the purpose of the Income Tax Act. The CRA administers advance deposits in accordance with the law and in the spirit of promoting voluntary tax compliance and self-assessment, the principle on which the Canadian tax system is built.

Companies make advance deposits to ensure that they will not be subject to arrears interest charges on tax obligations identified as part of a reassessment. These interest charges are not tax deductible.

[Translation]

It is also important to note that reassessments, and the consequent tax and interest liabilities that they can create, are a common occurrence under Canada's corporate tax system. In fact, many reassessments deal with multiple years and have significant financial consequences.

[English]

Reassessments of a corporate tax return can happen for a variety of reasons. For example, a corporation could request a loss carryback to a prior year or it could request a reassessment as a result of a tax ruling or an appeal.

To give you a sense of the scale of our reassessment activities, from April 2008 to March 2009 we processed \$4.6 billion in debit reassessments on corporate taxpayer accounts. To date, and in a manner consistent with Canada's self-assessment system, corporate taxpayers have made their own determinations about the risk of reassessment and their own decisions about whether to make an advance deposit.

[Translation]

That being said, we agree with the Auditor General that it is prudent to strengthen our challenge function, and by so doing help ensure that companies place monies on deposit only because they have a reasonable expectation of a future liability.

• (1540)

[English]

As a result, we've developed an administrative framework and an action plan to strengthen and improve our management of advance deposits. In short, we've updated our internal tools and procedures so that our experts are better able to ensure that advance deposits are made for bona fide reasons, we have revised our corporate instalment guide to make sure the intent of the advance deposits provision is clear to corporations, and we've scheduled a more robust review of all large-dollar advance deposits to determine the likelihood of required account adjustments and/or to issue refunds.

Significant changes to our administrative procedures will prompt further dialogue with businesses to ensure that advance deposits are justified. When a large advance deposit is not earmarked for a specific taxation year, corporate taxpayers will be contacted in order to get this information. Then the CRA will evaluate any perceived risks to determine that a reasonable amount is being placed on deposit. If our conclusions differ significantly from those of the corporate taxpayers, additional information will be requested. If no information is provided or if we conclude that the amount on deposit is not justified, we will issue a refund. As per the Auditor General's recommendation, we will also provide any information that is of interest and use to our colleagues at the Department of Finance.

[Translation]

We thank the Auditor General for her report, and we are confident that our action plan will result in the consistent application of the administrative practices I have described.

Our response to the Auditor General's recommendations will strengthen our administration of advance deposits in a manner that is not only respectful of the Income Tax Act, but also recognizes the legitimate interests of Canadian businesses.

[English]

Updated procedures, stricter requirements, and a more robust review process will enable us to better demonstrate that we are managing advance deposits from corporate taxpayers with due regard for economy.

Mr. Arsenijevic, Mr. McCauley, and I are happy to respond to the committee's questions.

Thank you.

The Chair: Thank you very much, Madame Lizotte-MacPherson.

We're going to start with five-minute rounds, just to see how far we get.

Mr. Lee, you have five minutes.

Mr. Derek Lee: Thank you.

Thank you for your presentations. I'll skip the Auditor General. She has a report in front of us. She spoke to it in her remarks. It's not out of disrespect; I just want to get right to the nub of the issue, which appears to have been missed by the witnesses from CRA—totally missed, and I'm really surprised.

I appreciate that you have only been in your job three weeks, but your colleagues have been there a lot longer. The issue is not deposits for overpayment risk. Of course, there will be deposits; there can be \$25 billion in deposits. The question is how much interest CRA pays on those deposits. Apparently, you've syphoned out about \$30 million in each of the last three fiscal years that didn't have to be paid, because the amount of interest you're paying exceeds what's being paid out on the street, exceeds what these corporations could get if they placed the money on deposit somewhere, and exceeds the amount of money you would have to pay in interest to borrow the money.

So the taxpayer is getting really skinned here, and I don't understand whether you can figure out whose money you're putting out the back door. You haven't addressed the interest rate that CRA pays on the deposits, and I want you to do that. I want to know why you haven't altered the interest rate.

And answer this question while you're answering the big one. You're not bound by a statutory rate of interest here. I understand that CRA voluntarily began to pay interest on these deposits; that's outlined in the Auditor General's report. Please get to the issue of why you're paying 5% to 7% interest on overpayment risk advance deposits. Please just tell me that.

• (1545)

Ms. Louise Levonian (Assistant Deputy Minister, Tax Policy Branch, Department of Finance): I think that's a question for the Department of Finance.

Mr. Derek Lee: It's not a question for CRA?

Ms. Louise Levonian: Are you questioning the rate of interest that's paid?

Mr. Derek Lee: I want to know who's on first base. I want to know why we spent \$30 million more than we had to on interest payments in the last three years. If it's Finance, let's hear from Finance.

Ms. Louise Levonian: Let me try to explain what the rate is. I think the question intermingles the CRA's and our part, which is a matter of policy as to what the rate is set at.

Mr. Derek Lee: In fairness to the witnesses, that's the only question. If you were paying 1% or nothing, this wouldn't be an issue in front of us today. But 5% to 7% is being paid and shouldn't be, and I want to know why it's being paid.

Ms. Louise Levonian: I can explain the rate of interest.

Mr. Derek Lee: You can try.

Ms. Louise Levonian: I'll do my best.

The rate that's set is a matter of policy that's determined by the Minister of Finance and cabinet as a whole. The rate, in essence, should be set to encourage taxpayers to pay their taxes; there's no question about that. That protects the taxpayer from interest charges that are actually non-deductible for the taxpayer. And if it turns out that taxes have been overpaid, then you can imagine that—

Mr. Derek Lee: I have to interrupt. I only have five minutes. We know why corporations make advance deposits. If there's anybody around the table in doubt, they can ask another question about it. You don't have to explain why they do it.

You have to explain why the government is paying 5% to 7% interest on the advance deposits. I can't get that out on the street. Why is the government paying it, when it's not statutorily bound to pay it in the first place?

Ms. Louise Levonian: It is statutorily bound.

Mr. Derek Lee: Explain why, please, and explain why it's 5% to 7%.

Ms. Louise Levonian: Okay. That's what I was trying to do.

What you're trying to do is balance the rate that's paid against... You're trying to be fair to the taxpayer, and at the same time you're trying to be fair to taxpayers' dollars in total. When deposits are put at CRA, and those payments really shouldn't have been put on deposit, not because of any fault of the taxpayer—

Mr. Derek Lee: You're doing it again. Ms. Levonian, I'm sorry, I'm not getting an answer. I need to know why the rate is set at 5% to 7%.

The Chair: Could you let the witness continue her answer?

Mr. Derek Lee: Not if she keeps going down the road that we've already been down.

The Chair: Ms. Levonian, you have the floor.

Ms. Louise Levonian: Let me try a different tack. The rate is set to be fair to taxpayers. That has to take into consideration not just the government's borrowing rate, but also how much it would cost the taxpayers to borrow it themselves, or even what the rate of return might have been had they been allowed to have those funds in their possession. It's a balance between making sure we're fair to the taxpayer and making sure we're collecting the right amount of tax at the end of the day.

If the administration is reviewed carefully and those deposits that should not be on the account are paid back, then there is no payment provided to the taxpayer that shouldn't be paid to the taxpayer. We're just trying to balance fairness to the taxpayer against collections for the government.

Mr. Derek Lee: You still, Ms. Levonian, have not told me why it is 5% to 7%. If there's no deposit, of course there's no interest payable. Why is it 5% to 7%?

Mr. Brian Ernewein (General Director, Tax Policy Branch, Department of Finance): If I may, first of all, it's not currently 5% to 7%. As one of the opening sets of remarks said, it's set at the treasury bill rate, rounded up to the next point plus two. Currently the treasury bill rate is, I believe, less than 1%, so currently the interest on overpayments is 3%. It has been 5% to 7%, and it's been higher in the past, reflecting the treasury bill rate of the past.

It's set by law. Parliament enacted a law in 1989 providing this rate.

The Chair: Okay. Thank you, Mr. Lee.

Madame Faille, *vous disposez de cinq minutes.*

[Translation]

Ms. Meili Faille (Vaudreuil-Soulanges, BQ): Thank you, Mr. Chair.

My question is for the officials from the Department of Finance.

In the 2007-2008 Report on Plans and Priorities, you identified this problem. You also addressed the steps to take in order to solve it. When did the problem first come to light?

Ms. Louise Levonian: For us....

Ms. Meili Faille: Yes, when it was recognized by the Department of Finance.

[English]

Ms. Louise Levonian: It was when the Auditor General began to audit the process.

• (1550)

[Translation]

Ms. Meili Faille: Prior to that, you were not aware of the practice?

Ms. Louise Levonian: No, we did not know there was a problem. We knew that people could make advance deposits to the Canada Revenue Agency, but we did not know that those deposits were too large.

Ms. Meili Faille: I want to ask the officials from the Canada Revenue Agency the same thing.

[English]

Ms. Linda Lizotte-MacPherson: We review advance deposits on an annual basis, and the CRA has long recognized the importance of managing these deposits—

[Translation]

Ms. Meili Faille: What year was that? When did you learn there was a problem?

[English]

Ms. Linda Lizotte-MacPherson: The agency has had this practice of reviewing the accounts in place since 1991. Based on the information that was available at the time, there was insufficient evidence to conclude that there was any problem or that corporate taxpayers were putting deposits in place for any reason other than to protect themselves against future reassessments.

[Translation]

Ms. Meili Faille: Thank you. So this has been going on since 1991. I know that the Auditor General indicated the figure for a few years, but how much has this cost taxpayers in total since 1991?

[English]

Ms. Linda Lizotte-MacPherson: I do not have that information, but as an example, every year the department does reassessments, and in fiscal years 2008 and 2009 respectively, we completed reassessments of \$3.5 billion and \$4.6 billion, and we had \$4 billion on deposit.

[Translation]

Ms. Meili Faille: So you did not notify the Department of Finance before the Auditor General's audit.

[English]

Ms. Linda Lizotte-MacPherson: The Department of Finance was aware of the practice we had in place, but as I said, from our perspective there was insufficient evidence to conclude that corporations were doing anything other than keeping deposits with us to protect themselves against future reassessment. From that perspective, there was no need to inform the Department of Finance.

[Translation]

Ms. Meili Faille: You waited until it came out in an audit before taking any real steps to solve the problem.

Ms. Levonian, did those steps include assessing other administrations that limit the amount of interest payable?

Ms. Louise Levonian: The Department of Finance is currently reviewing the rate to determine whether it should be changed. It is important to determine whether the new measures to be put in place by the Canada Revenue Agency will be enough to ensure that the amounts deposited are appropriate.

Ms. Meili Faille: Do you intend to revisit that formula?

Ms. Louise Levonian: We are in the process of determining whether the rate is appropriate.

[English]

The Chair: Thank you, Madame Faille.

Mr. Christopherson, you have five minutes.

Mr. David Christopherson (Hamilton Centre, NDP): Thank you, Chair.

And thank you all for your attendance today.

Commissioner, I want to follow up. Twice now you have commented that it was determined there was insufficient evidence to suggest that the corporations were doing anything other than what the policy was there for, which is to provide for them to put some money aside in the expectation....

You said it twice, and yet on page 8, in paragraph 4.21, the Auditor General says:

By 1991, the Agency recognized that some corporations might maintain excess funds on deposit to profit from advantageous short-term interest rates. In an internal memorandum, the Agency stated, "We are not comfortable with a practice which in effect could allow taxpayers to use their Revenue Canada accounts as an 'investment account'...."

Now, help me square the circle here. You said they didn't find any evidence, and we have a quote here from 1991 saying that since then, 18 years ago, the agency has been aware of potential abuse.

• (1555)

Ms. Linda Lizotte-MacPherson: Mr. Chair, that is precisely the reason the Canada Revenue Agency put in place the administrative framework. The CRA's understanding is that corporate taxpayers are making advance deposits as protective measures to mitigate against the accumulation of non-deductible arrears interest; however, in light of the concerns that were raised by the Auditor General, the CRA has further enhanced its administrative process to ensure that the need for advance deposits is validated.

Mr. David Christopherson: So do I understand that you think the Auditor General is wrong, but you're doing this out of the political necessities and niceties required?

Basically, I'm hearing you say that it wasn't a problem then and is not a problem now.

Mr. Brian McCauley (Assistant Commissioner, Legislative Policy and Regulatory Affairs Branch, Canada Revenue Agency): George may want to jump in.

There were some steps taken in 1991, and I think that's the reference—

Mr. David Christopherson: They didn't work very well, did they?

Mr. Brian McCauley: Well, it's a matter of perspective, but maybe George can speak about what happened in 1991.

Mr. David Christopherson: No, sir, it's not a matter of perspective; it's a matter of the auditor's analysis.

Mr. George Arsenijevic (Assistant Commissioner, Assessment and Benefit Services Branch, Canada Revenue Agency): Back in 1999, when this policy first came into place, it was new. There were processes and procedures that were put in place.

CRA is a large organization. There are people with different interpretations of what we have in place.

Since the findings of the AG's report, we have accepted those findings and are now in the process of strengthening the review

procedures we currently have in place so that we'll be able to detect any instances when—

Mr. David Christopherson: Okay, but I have to tell you that this sounds different from what the commissioner said. The commissioner was pretty much saying that the policies are okay, that they don't think this is a problem but are responding to the Auditor General. But you're saying it's wrong.

I'm not clear that the agency is in agreement, as opposed to just going along because they have to.

Ms. Linda Lizotte-MacPherson: I think, Mr. Chair, there are always opportunities to improve any process, and by following the recommendations of the Auditor General, we have enhanced the framework to minimize the risk of any unnecessary deposits being held.

Mr. David Christopherson: What do you mean by "enhanced", please, Commissioner? Exactly what does that mean? You had a process in the past and you're beefing it up.

Also, if I can, because I have very limited time, you say you beefed up the procedure, but the procedures are pretty much the same. At the end of the day, it's still the call of the agency, but they didn't use the power they had before. If the corporations pushed, they caved. I want to know what's going to change if they push now. I hear you're going to ask for information, but at the end of the day, if they still give a push back and say they want to leave it there, there's no appeal body. I'm not seeing that it goes somewhere, to a higher authority. What's to prevent us from ending exactly where we are now?

Ms. Linda Lizotte-MacPherson: Under the enhanced framework, the review process undertaken by the Canada Revenue Agency will include validation. It will also include additional due diligence. We'll validate with the organization whether there is a legitimate risk of—

Mr. David Christopherson: I'm sorry, Commissioner, but are you saying that wasn't done before?

Ms. Linda Lizotte-MacPherson: In the past, as I said, the policy in place was that we relied on the taxpaying corporation to determine whether they felt there was a risk and that the deposit should be maintained.

We did confirm with them on an annual basis, as part of our annual review, whether they still felt the deposit was required. Through our enhanced process, we are now going to be doing some further consultations with them directly and doing additional due diligence as part of that process.

Mr. David Christopherson: Thank you.

Auditor General, what are your thoughts on what we have heard so far?

Ms. Sheila Fraser: Well, Chair, in the report we note that there was a lack of guidelines, policy, and procedures. It was not clear to personnel in the agency what they should do with these deposits if they were over an amount that could reasonably be expected in an assessment. I'm presuming that with this action plan there will be clearer guidance provided to staff.

The Chair: Thank you.

Go ahead, Mr. Saxton, for five minutes.

Mr. Andrew Saxton (North Vancouver, CPC): Thank you, Mr. Chair.

My first question is along the same lines as my colleague Mr. Lee, because that's precisely the question I had. Coming from a banking background, I'm interested in how interest rates are calculated.

This is a question for Finance. Is it correct that it is a statutory rate?

Ms. Louise Levonian: Whatever the 90-day T-bill rate is, it's rounded up, and then we add two percentage points to it to provide the interest rate that's paid to the taxpayer.

• (1600)

Mr. Andrew Saxton: Okay, so the formula is statutory.

Mrs. Louise Levonian: Yes, it is, as per the law.

Mr. Andrew Saxton: It is as per statute, and the reasoning behind it is that it takes into consideration the cost of borrowing to the taxpayer having to put those funds up. That's what you mentioned earlier. Is that correct?

Mrs. Louise Levonian: It's one of the considerations in determining what the rate should be. It's not just the government's borrowing rate, but, potentially, what the taxpayer's borrowing rate is. Of course, that's difficult to assess, because different taxpayers have different risk profiles and will borrow at different rates. It's just one of the considerations that's taken into account when determining what the appropriate rate should be.

Mr. Andrew Saxton: Right, but the assumption is that the taxpayer would likely have to borrow the funds to then deposit them with you. Is that correct?

Mrs. Louise Levonian: No, it's not necessarily that we assume that. It's just one rate that you would take into account. Another rate that you might take into account is the return a corporation could earn on those dollars had they been able to retain those dollars.

It's just not black and white. You're trying to balance fairness to the taxpayer against fairness to all taxpayers. To come up with a reasonable amount of interest that should be paid to a taxpayer, we wouldn't take into account just what the government's borrowing rate is, but a number of different borrowing rates.

Mr. Andrew Saxton: Right, okay. I understand.

It was also mentioned earlier that the entities that are depositing the funds have to have a reasonable expectation of future liability. Who decides whether there is a reasonable expectation of future liability?

Mr. George Arsenijevic: In the administration of the advance deposits, we will take a look at the situation with the corporation and, under the enhanced process, we will determine what the bona fides are of the request and of the possibility of reassessment. Initially, we'll have accounting people involved. If we are not able to arrive at an agreement with the corporation at that level, we will then involve our senior audit staff to take a look at the filing of the corporation and determine whether there is a bona fide chance of reassessment and therefore a requirement for an advance deposit.

Mr. Andrew Saxton: But you make the final decision, then, on the likelihood?

Mr. George Arsenijevic: That's right.

Mr. Andrew Saxton: Okay.

My next question is with regard to existing balances. How do you refund them? What is stopping you from refunding existing balances to corporations or entities that you decide do not have a reasonable expectation of future liability?

Mr. George Arsenijevic: What we're putting in place is, as I said, a two-step process. When we get an advance deposit now, there are enhanced routines that are followed. Before, we would accept advance deposits without certain information; now we take a look to make sure the identification is correct and to see if a tax year is attached to those advance deposits, which is an important indicator for us in terms of identifying the tax year the corporation may feel there may be some issues with down the road. We do that, and if the corporation will not provide us with that information, we will not accept the advance deposit.

Now, we have advance deposits that have already been accepted. Those advance deposits will form part of an annual routine process that we have from November to December, and that annual routine process will also be enhanced. We'll take a look at what's there; we'll then take a look at the underpinnings of the possibility of reassessment. We'll ensure that all the information we need is there. If it is, we will make a determination as to whether the advance deposit should be returned or not.

Mr. Andrew Saxton: What is the mechanism you use to return those funds?

Mr. George Arsenijevic: In most cases we're talking about large corporations. We're talking about amounts probably in excess of \$25 million. There is a large-value electronic transfer system available, and we would communicate with the company and transfer the funds.

Mr. Andrew Saxton: Thank you.

The Chair: I have a quick question before we go to Ms. Crombie.

I have to agree with Mr. Lee here, and I'm going to put this to the Auditor General. I may be totally wrong, but it seems to me that the issue is the interest rate. The way the markets are now, it appears to me that the interest rate is too high, and as a result companies are using CRA as an investment bank. They're getting more money from CRA than they can get anywhere else in Canada in the short term. As a result, Canadian taxpayers lost about \$30 million in each of the last three years, and it probably goes back over the last 20 years. Those findings were not contested by either the CRA or the Department of Finance. The public accounts committee has to accept the findings that were agreed upon, which are that we are losing \$30 million a year.

The CRA is talking about an elaborate scheme whereby each account would be monitored. It seems to me to be a horrendous amount of work to monitor each advance payment to see if it is bona fide and to get into that argument before the assessment is adjudicated.

I really think it's the interest rate, and I don't think all this administrative talk will solve the problem at all until you can deal with the interest rate.

Auditor General, do you agree with my assessment?

• (1605)

Ms. Sheila Fraser: Chair, it's a little difficult for me to comment on the interest rate, because that is established in the income tax regulations, so it is law.

I would note, as I noted in my opening statement, that the Minister of National Revenue did write to the Minister of Finance in July, asking him to review these issues around the interest rate, because that's what Finance would have to look after. The CRA can do its part to try to minimize those deposits, but the question of the interest rate is a responsibility of Finance.

The Chair: I realize that it is the finance minister's decision.

Let me go back to you, Ms. Levonian. We heard evidence that the CRA minister wrote to the Minister of Finance in July to ask for a review. Has that review been done? Do you have anything to tell this committee as to what might have arisen from those deliberations and discussions?

Ms. Louise Levonian: What I can say is that we're definitely now aware of the issue and we're looking at the interest rate in the context of some of the considerations that I've laid out here. What we'll do next is provide advice to ministers, and I couldn't really bring that to the table here.

The Chair: In the meantime, taxpayers are losing \$2.5 million a month. It's just wasted.

Mr. Terence Young (Oakville, CPC): It's only 3% now.

The Chair: Well, the rates went down, so it's all relative.

An hon. member: It's only a few million; it doesn't matter.

The Chair: Ms. Crombie, five minutes.

Mrs. Bonnie Crombie (Mississauga—Streetsville, Lib.): Thank you, Mr. Chair. Welcome to our guests.

It's written in a number of places that the same 50 corporations are accounting for two-thirds of these deposits. As we've all discussed, \$4 billion is held each year at two points above your government's cost of borrowing, which amounts to \$30 million.

Which 50 corporations are these? I'm sure you can't say, but which industries do they represent? Why are they always at risk? Why are they always reassessed? How is their risk being reassessed?

Ms. Linda Lizotte-MacPherson: Mr. Chair, the honourable member is quite right; obviously we're not in a position to discuss any particular file, and as I mentioned, there can be any number of reasons for a corporation to have a reassessment—

Mrs. Bonnie Crombie: Granted, but it says it's the same 50 each time.

Ms. Linda Lizotte-MacPherson: Perhaps I could ask my colleague to elaborate a little further.

Mr. George Arsenijevic: The whole world of corporations is quite a bit different in terms of reassessment activity. There are a lot of transactions; many of them are extremely complicated and take place over a number of years. Therefore, a continuous stream of assessments and reassessments goes through these corporations. It's very dynamic, and lots of deposits and withdrawals are made.

Mrs. Bonnie Crombie: Okay. Is there any bona fide concern that some of them are doing it for profit or for advantage?

Ms. Linda Lizotte-MacPherson: As I said, Mr. Chair, based on the information that was available to us at the time, there is no evidence of corporations putting money on deposit for any reason other than to protect themselves. That having been said, we have developed a comprehensive action plan that strengthens and improves our administration of advance deposits in a number of ways, including the review of these accounts to determine the likelihood of a reassessment, whether the accounts should be adjusted, and whether a refund should be issued. We are confident that the enhanced framework will minimize the risk of unnecessary deposits being held.

Mrs. Bonnie Crombie: Why did it take so long to establish this new framework after we realized there was a concern dating back to 1991?

• (1610)

Ms. Linda Lizotte-MacPherson: Mr. Chair, I want to provide clarification with respect to 1991. That was the time when, prior to that, some concerns had been identified, and as a result Canada Revenue Agency put in place the framework and the policies and practices that we've been using. They have continued to be enhanced on an ongoing basis.

As a result of the report and the recommendations from the Auditor General, in which she indicated that CRA could improve its administrative process to ensure there's no potential for misuse of the advance deposit mechanisms, we have further strengthened the enhanced framework.

The Chair: I think the Auditor General wants to comment, Ms. Crombie.

Mrs. Bonnie Crombie: Certainly.

Ms. Sheila Fraser: Chair, I'd just like to make one point that we made in paragraph 4.20 in our report. We indicate that this issue arose during the agency's audit of its financial statements. In doing its review, the agency itself concluded that in many cases the deposits exceeded the potential taxes payable. That's important because those amounts are actually reported as payable and not as tax revenues. The agency, in its own analysis, came to the conclusion that those deposits exceeded any potential taxes that would be payable by a very limited number of corporations.

Mrs. Bonnie Crombie: Right. Did the Department of Finance, as represented here, have a concern? Do you feel there's need for some sort of regulatory change? Do you feel there are any number of corporations that may be taking advantage of this preferential interest rate?

Ms. Louise Levonian: I think it goes back to what I indicated before: now that we are aware of the issue, we are reviewing the interest rate. I think, though, that part of the deliberations going forward will be the review of these advance deposits by CRA and the progress in that respect in what the CRA does.

Mrs. Bonnie Crombie: Do all jurisdictions pay similar interest rates? I know we had an example in the case study showing that they're considerably lower in other jurisdictions, or that there are none at all.

Ms. Louise Levonian: In the case study, I think the examples were Alberta and Ontario.

Mrs. Bonnie Crombie: Yes, and there was also the U.S.

Ms. Louise Levonian: Internationally we're in line with Australia and the U.S. and others. The U.K. has a lower interest rate than we do. We're not out of line with some countries, but other countries have a lower rate. Again, I reiterate that the rate setting is a matter of policy that is trying to balance different factors that come to it.

Mrs. Bonnie Crombie: Thank you.

Ms. Louise Levonian: You're welcome.

The Chair: Mr. Shipley.

Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC): Thank you, Mr. Chair, and thank you to the witnesses for coming out.

To Ms. MacPherson, how do you determine what is a reasonable amount? In your presentation you said that you will determine a reasonable amount of deposit.

Then I have a follow-up—from, actually, some of my colleagues—on the refund. There was some issue that they wouldn't accept a refund back, which is a little frustrating to find out from a taxpayer's point of view. You're CRA, and for the general purpose of many taxpayers, it isn't an agency that they've endowed a lot of love to. They've sent out a lot of their money to it.

Now you're saying, well, these large corporations have a large deposit sitting in an account, and you're telling them they don't need it. They're saying, no, they don't want to take it back, they actually want to gain on it.

I suspect when you only have 50 corporations.... They are taking a large whack of money, as you have indicated. That is a large deposit. For them it may be small just because they are huge companies. But for 18 years no one has taken any initiative. No one has taken any initiative, either from Finance or from CRA, to do anything about it until the AG comes along and says it is time to do something.

Now here we are, and \$30 million a year is a fair whack. If you go back over 18 or 19 years, that's a lot of money for taxpayers.

I want to know how you are going to determine a reasonable amount, since these are large corporations. Will you be able to enforce a refund? I hope at some point in time.... It doesn't have to be a long one; you can say, "Yes, we're going to be able to send it back to them."

Then as we move along, I want to.... At least the Minister of Revenue sent it to the finance minister this year, brought it to their attention, so it looks like there's action being taken.

I would like you to tell us today, or to table, when you will be able to supply us with some sort of a schedule of how you're going to bring forward those discussions and a strategy.

Actually, this comes from the AG's report, so I'm not taking responsibility for these good questions.

How will the agency actually strengthen those administrative practices that you continually talk about? You talk about being robust all the time. I actually want to know what you're going to do.

So I'll just leave those at this time.

• (1615)

Ms. Linda Lizotte-MacPherson: Thank you, Mr. Chair.

The honourable member has asked a number of questions, but let me be clear that through the new administrative policy we'll absolutely be able to enforce a refund and issue a refund. I will defer to my colleague to review some of the details of the CRA's action plan.

I should also note that in terms of determining whether or not there is a risk of a reassessment, we would do that in consultation and have discussions with the corporate taxpayer. At the same time, we also need to balance the risk. If there is a reassessment, we need to balance whether or not that corporation would be able to pay additional moneys if they did not keep a deposit with us. So that is also a consideration.

I will ask my colleague to just highlight a little bit more on the timetable.

Mr. George Arsenijevic: In terms of the timetable, on May 15 we put in place a more robust process for the new advanced deposits that come in to us. We do the screening and we do ask for additional information. We ask for the tax year and for the reasons behind the advance deposit. That's for new funds coming in; it's already in place.

We are updating the installment guide. It has been completed, but unfortunately it will not be published until February of 2010. It outlines the new processes that we have in place. However, when we do get the deposits coming in to our accounting areas we automatically put that into place. But the public corporate installment guide will be updated showing these policies to the public in February. In November of this year we are starting the annual review, and we'll complete it by the end of this year.

Mr. Bev Shipley: Mr. Chair, to finish what I asked, I think something needs to be written down in terms of strategic direction.

I hear what you've done and what you're planning on doing, but from this committee's perspective I think we would like to know how we're going to get to the end of it. If you could give us the strategic direction with some timelines, I'd appreciate that.

The Chair: They did file an action plan. Did you realize that, Mr. Shipley?

Mr. Bev Shipley: Yes.

The Chair: Go ahead, Mr. McCauley.

Mr. Brian McCauley: To supplement that a bit, the provision for advance deposits is important for many corporations in Canada. It does allow them to prevent the interest and other charges that could be significantly damaging to a corporation, particularly because they're not deductible. We want to ensure that where the provision is being used legitimately that it continues to be available to corporations.

With regard to the challenge function we're putting in place, we want to know we can demonstrate, and that the company can demonstrate, that there's a link between a potential for reassessment and the amounts on deposit. But we have to make sure we don't replace our judgment, if you wish, on the potential of reassessment—that the corporation has an opportunity to display that to us—because there may be a question of liability if we send funds back, there is an eventual reassessment for that year, and the corporation had funds on deposit. We have to be very careful to make sure we don't cost interest that we have to pay if we turn too much back.

While we accept members' comments, we have to be fair to the regime itself.

Mr. Bev Shipley: Is March 31 the date you will have the results of the enhanced administrative framework for evaluation?

Mr. George Arsenijevic: That's correct.

Mr. Bev Shipley: Thank you.

The Chair: Thank you.

I'm going to go to Mr. Paillé for three minutes, Mr. Weston for three minutes, and Mr. Christopherson for three minutes.

Monsieur Paillé, trois minutes.

[*Translation*]

Mr. Pascal-Pierre Paillé (Louis-Hébert, BQ): Thank you.

What I find disappointing in this whole thing is the carelessness. There are several issues here. Not only have you known about this for 18 years, but you were also slow to take action.

I think businesses would pay more attention if there were tighter controls or regulations, especially if they had to pay penalties or interest. Do you not think that this approach takes the responsibility off businesses?

• (1620)

[*English*]

Ms. Linda Lizotte-MacPherson: Mr. Chair, we have no evidence that suggests corporations were placing amounts on deposit for any reason other than anticipation of a future reassessment.

With that said, though, we have enhanced the framework. We are training our staff on the new procedures and guidelines, and we are strengthening our annual review process so there is an additional challenge function to make sure there is a valid reason for those funds being on deposit and we have an opportunity to have a discussion. As I said, if we determine after those discussions that the funds do not appear to be on deposit for a valid reason, then we would refund those amounts or make adjustments to the amount on deposit.

As well, we've updated our corporate instalment guide to include more details on what information is required, including, for example, the applicable tax year. If the corporation does not provide us with a tax year for new deposits, we will not accept those deposits. On existing deposits, we would enter into a discussion to take a look at that particular year. So our review process is being strengthened.

We also need to make sure we're respectful of the Income Tax Act as well as the legitimate interests of Canadian businesses.

[*Translation*]

Mr. Pascal-Pierre Paillé: Pardon me, but I am short on time. So I will move on to another question.

The rate is adjusted every quarter. Is that pursuant to the act? Why not every day or why not based on the market?

Mrs. Louise Levonian: I don't know how to say it in French. It is

[*English*]

the 90-day T-bill rate. It's whatever the market sets as the 90-day T-bill rate.

The Chair: *Merci beaucoup, Monsieur Paillé.*

Mr. Weston, three minutes.

Mr. John Weston: Thank you, Mr. Chair.

Thank you, guests.

You've given me three minutes, so I have to talk really fast.

The Chair: No, talk slow; talk less.

Voices: Oh, oh!

Mr. John Weston: Thank you, Mr. Chair.

And I want to share my time.

Madam Lizotte-MacPherson, you asked how they could pay additional money if they do not make a deposit. Maybe there are other mechanisms, like an escrow account or something, that could be explored. Since you're so new, I'm going to congratulate you on your appointment and switch to Madam Fraser.

Since we often look in this committee at other jurisdictions, have we examined what other jurisdictions may do?

If you could answer in less than a minute, then my colleague can ask his question.

Ms. Sheila Fraser: I would just refer you to the report. In schedule 4.1, we note what Alberta, Ontario, and the United States do, as examples of practice elsewhere.

Mr. John Weston: All right. And that's something, I assume, the agency will be examining, if not the department?

Ms. Sheila Fraser: The agency is aware of this report, and we validated all the facts in this report with them before it was released.

Mr. John Weston: Thank you.

Go ahead.

Mr. Terence Young: Thank you.

Congratulations to Madam Fraser and her team for identifying the problem, and congratulations for what looks to be a viable plan to solve the problem.

I have a question for Mr. Ernewein regarding the \$30 million interest paid to those companies on that money. Does any of that come back in corporate tax? And if so, how much?

• (1625)

Mr. Brian McCauley: Well, it's included in income, so it depends on the income of that particular corporation.

Mr. Terence Young: I'm not trying to justify it; I'm just saying that for some reason this has gone under four different governments since 1991 and about seven different Parliaments, and I'm trying to understand why it wasn't changed before.

For the people from Finance, are there any other risk-benefit advantages to holding \$4 billion of these companies' money? For example, if one of them goes bankrupt, are you at the front of the line anyway? Do you have an advantage holding their money if they go under?

Ms. Louise Levonian: Absolutely. As part of the answer to the first question, I was trying to say that paying those advance deposits actually protects the taxpayer from interest charges that are non-deductible. So there are valid reasons why companies would put that money on deposit to protect themselves. And rightfully so, because the interest they pay on those is non-deductible. It also reduces the risk for the government to collect those revenues. When they're on deposit, we have access to them.

Mr. Terence Young: Can you quantify that in any way, the \$4 billion?

Ms. Louise Levonian: Do you mean how much do we end up collecting?

Mr. Terence Young: How much have you saved in 15 years or 17 years?

Mr. Brian McCauley: As the commissioner mentioned, we charge about \$2.1 billion a year in terms of interest charges to corporations, and we reassessed about \$4.6 billion, I think it was, in the last full year. So that puts that \$30 million in a bit of context. You're dealing with the largest corporations in Canada. They want to ensure they stay on the right side of corporate compliance and they put those funds on deposit with us to ensure that they are covered. But as Madam Lizotte-MacPherson said, with the new challenge function, there'll be no gap between the risk they're portraying and our understanding and being able to demonstrate that risk is there.

The Chair: Thank you very much.

Mr. Christopherson, for the final three minutes.

Mr. David Christopherson: Thanks, Chair.

It's interesting. When I listen to this, I keep coming to the conclusion that somehow we have this "bass backwards". Rather than the situation we have now, would it not be that the government would say to taxpayers, whatever the entity, "There's a good chance that you're going to be reviewed; you've got a bad track record of paying your debts in the past", or "We've had problems with you", or "Things don't look good, we want some money on deposit", and the corporations should be crying to the politicians that they're not getting enough money when they're forced to put this money in here. Yet we have this situation where it's voluntary; they seem to be quite anxious to leave the money. And we know why.

Ms. Levonian, as the DM, doesn't it seem wrong to you that we're doing it this way, rather than only keeping money on tap? I mean, why should we be doing that unless you have a concern that they won't pay it, in which case the pull ought to be from the government, pulling the money in, with them saying, "Hey, you're taking my money, but you're not giving me enough"?

Why does it work the way it does? What's the thinking behind it?

Mr. Brian Ernewein: Perhaps sight is being lost of the basic point. First of all, this is taxpayers' money and these are the same rules we're talking about in this context that apply to each and every one of us. When we have an overpayment and are entitled to a tax refund from Revenue Canada, the rate of interest paid on that refund is the same for individuals and corporations.

The question here is whether corporations in particular are overpaying to provide for potential reassessments, and treating CRA as an investment bank. It seems that CRA and the AG's own report have had the right policy since the outset. There is only to be an acceptance and holding of such deposits when reassessments are likely. The verification of that is the point that seems to be at issue, and the commissioner has spoken to that.

Mr. David Christopherson: I'm still not convinced, but that's neither here nor there.

I do want to ask one component question. I realize it's ADM, so take the promotion and run with it. It's when they under-promote you.... If anybody in uniform walks in, you're not sure if they're a general. That's the way it works in politics.

I'm having trouble understanding why there would be a concern that they get enough money back, in lieu of what they could have done with that money, when they're the ones who voluntarily put it there in the first place.

Ms. Louise Levonian: We've constructed a situation where if they don't give us the right amount of tax, we are going to charge them interest that's non-deductible and there will be penalties. In this whole thing it's a balance of trying to treat the taxpayer fairly. If our assessments show they did pay too much tax, it seems fair and reasonable that we should pay them either the government's borrowing rate, the rate they would have borrowed at, or what they would have earned as a rate of return. There should be some kind of fair compensation if the government has kept a taxpayer's money that it shouldn't have kept.

● (1630)

Mr. David Christopherson: But they volunteer it.

Ms. Louise Levonian: But they don't know exactly how much could be owed to them at the end of the day. These are large corporations.

Mr. David Christopherson: Is there any worry of collusion?

Thank you.

The Chair: I have just one point before we close, maybe to Ms. Fraser or Ms. Lizotte-MacPherson. You're saying there was a \$30 million loss over the last three years, but it would probably be \$30 million over the last 19 years. Is that a fair assumption?

Ms. Sheila Fraser: We certainly haven't calculated that. I presume there would have been deposits during those years, but we didn't go back to see what the level of those deposits would have been.

Ms. Linda Lizotte-MacPherson: CRA's position is that we did not waste taxpayers' money. Based on the information that was available to us at the time, there was insufficient evidence to conclude that corporations were putting on-account deposits for anything other than reassessments they expected in the future.

Mr. David Christopherson: I have a point of order.

We've gone through this whole thing and now the commissioner is telling us there's no problem?

The Chair: We have to go.

Madam Commissioner, the meeting is pretty well over, but I'm going to read the last sentence of the main points.

We conservatively estimate, based on a limited number of accounts, that the difference between the government's borrowing rate and the interest rates on these deposits represents at least \$30 million in unnecessary interest costs for each of the past three years.

The CRA agreed with that statement. If they didn't agree, they should have challenged it beforehand. We don't arbitrate the facts. We assume that the facts are determined before the matter comes to the committee, so we'll go to our deliberations assuming that fact is correct. That's all I can say.

Do you have a point, Madam Fraser?

Ms. Sheila Fraser: I hate to disagree with the commissioner—and she may have been improperly briefed—but in paragraph 4.20 we say:

When it prepared its year-end audited financial statements for 2007 and 2008, the Agency identified some cases in which corporate taxpayers had made an advance deposit because an ongoing audit presented a bona fide risk of reassessment. In most other cases, the Agency concluded that the amount of funds on deposit significantly exceeded its estimates of additional tax that might be payable under future reassessments.

The agency did not indicate any disagreement with the facts. This is their assessment and they agreed with that statement.

The Chair: I'll give you a last comment, Madame Lizotte-MacPherson. But the committee has no option but to start our deliberations based on the assumption that statement is factually correct.

Ms. Linda Lizotte-MacPherson: On a point of clarification, the official was referring to accounting principles that require the

amounts on deposit to be recorded as a liability on the financial statements until the reassessment of taxes owing is complete.

As I indicated, I think we agree with the recommendations of the Auditor General, and we have put in place a robust action plan to deal with those findings and recommendations.

The Chair: Thank you very much.

I'll now ask the parties for any concluding comments. I'll start with Ms. Fraser and then go to Madame Lizotte-MacPherson.

Ms. Sheila Fraser: I'd like to thank the committee for its interest in this report. I think the issue is a fairly straightforward one. The committee may wish to ensure follow-up by asking for the amounts on deposit at the end of the next fiscal year.

Thank you, Chair.

The Chair: Madame Lizotte-MacPherson, do you have any closing comments?

Ms. Linda Lizotte-MacPherson: I would like to thank the committee for having us here this afternoon. We have developed a robust administrative policy on managing advance deposits and are confident that the enhanced framework will reduce unnecessary interest costs.

Thank you.

• (1635)

The Chair: Okay. That word "robust" has been used a lot at this hearing.

Ms. Levonian, do you have any final comments?

Ms. Louise Levonian: I want to thank the committee and the chair for allowing us the time to appear on this issue.

The Chair: I want to thank everyone for being here today. This is a very interesting issue, and the committee will certainly be writing a report.

[*Proceedings continue in camera*]

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