September 2018 Edition

The Tax Informant

"Father, forgive them, for they do not know what they are doing"

The Department of Finance Canada and its civil servants in complete disarray (Part 2)

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This famous sentence, from the Gospel According to Luke, perfectly summarizes the current situation. The civil servants at the Department of Finance Canada have utterly failed in their **duty as trustees of our collective wealth**. Here is more disturbing proof.

In this second of a series of newsletters describing this significant problem, we will continue to demonstrate, **with numerous examples throughout these newsletters**, how this appalling situation has developed over the past 30 years (specifically over the last 15) and how it was caused by the inaction of the civil servants at the Department of Finance Canada. Taxpayers have become the butt of a joke created and perpetuated by these civil servants who seem to live in another reality. In fact, their gaffes have and continue to cost billions of dollars. It's the equivalent of the Phoenix pay system scandal, but with no end in sight because these technical problems are much less visible to the general public and few people understand the complexity of the tax issues at play. Who pays for all these mistakes? Taxpayers. Except of course, those who have been able to benefit from the incredible ineptitude of these civil servants. The tale of this sad saga continues…

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In the first newsletter published in September 2017 (see **http://www.cqff.com/informateur/Deroute_fiscale_anglais_sept2017.pdf**), we focused on four (4) examples of major mistakes, blunders, and cases of unbelievable incompetence. Here is a brief reminder of each of the examples discussed. Simply click on the title to access the corresponding section of the first newsletter.

A. Six years for a correction to the taxation of "non-eligible" dividends: an oversight that has cost the government at least $2.5 billion

B. "Paved" farmland: several hundreds of millions of dollars in lost tax revenue for no reason … since 1988!

C. Examples of inactions that continue to punish taxpayers, such as the "plex" saga

D. A great example of "practical" incompetence: the partial or total loss of SBD for subcontractors who do not deal at arm's length with a shareholder of another SME

Let's take a look at more examples demonstrating the clearly unsatisfactory work being done by the civil servants at the Department of Finance Canada.

E. Since 2001, nearly 13,000 children between the ages of 0 and 19 have realized almost $3 billion in tax-free capital gains by selling shares of SMEs. Who is guilty of this momentous gaffe? Take a wild guess…

As every tax expert knows, since 1985 there has been a lifetime capital gains tax exemption on the sale of SME shares (there is also an exemption on the sale of qualified farm or fishing property). For small business shares in 2018, every eligible individual may accumulate up to $848,252 in tax-exempt capital gains (the limit is $1 million for farm or fishing property).

According to the Department of Finance Canada, this measure was adopted in 1985 to stimulate risk-taking and investment in small companies and to help business owners become financially secure for retirement. It was also designed to promote the growth of farm and fishing companies. But how do you explain that **nearly 13,000 children between 0 and 19 years of age** have benefited from this exemption since 2001 (we would have **gone as far back as** 1985 if tax statistics were easily available for years prior to 2001)? How is it possible that between $2.5 billion and $3 billion in capital gains have slipped through the hands of tax authorities (both at federal and provincial levels) since 2001? How is it that the federal and provincial governments have lost between $500 million and $600 million in tax revenue since 2001? Have these young people helped SMEs take risks? Was it the government's plan to make sure they are financially secure for retirement? Ridiculous, right? Here is the proof that shows that this simply does not make any sense. And of course, you, the taxpayer, are footing the bill…

Tax statistics from the CRA

The figures we use have all been published by the Canada Revenue Agency (CRA) since 2001. For 2017 and 2018, we extrapolated using statistics from previous years because the data for this period is not yet available. Usually, statistics deal with five-year age groups but young taxpayers are grouped into one single category (under 20 years of age). Even if that includes individuals who are 18 and 19 (adults), keep in mind that the tests associated with capital gains exemption generally require that the small business shares be kept for at least two years (directly or via a trust). That means that for someone who is 18 or 19, a significant part of the increase in value occurred when they were a minor.

We are aware that the proportion of individuals aged between 0 and 19 who claim this exemption is very low compared to the adult population. However, the **average capital gains exemption** claimed by each of these young individuals over the past few years was a staggering **$280,000**! Surprising, right? And it's all lost tax revenue. In our opinion, this figure should have been zero! And if you want to go check the CRA's tax statistics for yourself, don't forget to multiply by two, because the statistics only list the amount of the "taxable capital gains deduction" which is 50% of the gain realized.

Recently, this author was made aware of a situation where five members of the same family (both parents and three minor children) claimed an exemption for $4 million in capital gains out of a little more than $8 million, or five times the applicable exemption limit at the time of $800,000. And that is far from being the only outlandish case. Apart from a handful of hardliner tax experts for whom such a situation may seem reasonable, most tax experts will tell you that this generosity to minors makes absolutely no sense. Why provide an aid of this magnitude to families who clearly do not need this kind of assistance?

Tax nonsense and analogy with the principal residence exemption

We can make a very simple analogy with the exemption from tax on the capital gains realized on the sale of a principal residence. Since 1981, this exemption has been limited to one single "family", which here essentially means tax spouses and … **minor children**! That means that if this "family" has more than one residence (cottage, city home, condo in Florida, etc.), only one property is eligible for a capital gains exemption for every given year they owned multiple residences (whether directly or via a trust).

It is therefore impossible to claim a principal residence exemption for more than one building by using minor children. This is simple, clear, and fair.

So how is this possible with small business shares? Tax legislation has long existed to create "presumptions" when minor children are involved. Here is one example (among many): paragraph 256(1.3) of the ITA clearly states that capital stock of a corporation owned by a child under 18 years of age (directly or via a discretionary family trust) is deemed to be owned by the parent of the child … but only in order to determine whether corporations are "associated" (for the purpose of sharing the amount eligible for the reduced tax rate for SMEs). Why does this presumption not make the capital gains realized on small business shares owned by a child under 18 years of age deemed realized by their parent? Would it be hard to enforce? Not at all … and everyone, except in extremely rare cases, would obviously agree with such a legislation. But the civil servants at the Department of Finance Canada who are responsible for tax policies prefer to squander away our collective wealth by continuing to ignore the problem. With the stunning incompetence (which is putting it politely) of the Morneau tax reform carried out in the second half of 2017, this multiplication of the exemption had initially been opposed (ineptly) before the Department of Finance Canada backpedalled in October 2017 without having issued a simple rule like the one we are proposing here. The result: since 2001, federal and provincial governments have missed out on between $500 million and $600 million in tax revenue. We can only shake our heads in disbelief and utter "*Father, forgive them, for they do not know what they are doing*."

F. Life insurance policies being transferred to private corporations: hundreds of millions of dollars in lost tax revenue while civil servants at the Department of Finance Canada were asleep at the wheel for 14 years — despite warnings issued by the CRA as early as 2002!

This is another example of the civil servants at the Department of Finance Canada taking their sweet time (14 years, despite unambiguous written public notices on the topic) to correct an unreasonable tax planning strategy that was well known by tax experts. In fact, most tax experts were baffled as to why in the world this strategy continued to be permitted. A strategy that was not aggressive since the *Income Tax Act* was so clear-cut on the issue. Furthermore, the Canada Revenue Agency (CRA) notified the Department of Finance Canada as early as 2002 of the inconsistency that existed.

What has happened since 2002

In May 2002, during a roundtable with the civil servants of the CRA at the annual CALU (Conference for Advanced Life Underwriting) event, a Pan-Canadian professional association of advisors from the life insurance sector, the CRA was asked the following:

What happens if an individual transfers a life insurance policy to a corporation they control and the life insurance policy has no cash surrender value but a higher fair market value (FMV)?

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As an example, a Term to 100 life insurance (T100) has no cash surrender value, but its FMV can increase significantly over time. This can simply be due to the individual aging or because of a deterioration in their state of health after they purchased the life insurance policy.

To their credit, the CRA clearly answered the question at the time by stating that a corporation could then pay a monetary consideration to the policyholder that would be equal to the FMV of the policy at the date of transfer. The CRA also stated that as per paragraph 148(7) of the ITA, the individual would be deemed, for the purposes of calculating their personal income, to have disposed of the life insurance policy for an amount equal to its cash surrender value, which would be zero in this case. The CRA stated in 2002 that as a result, the **shareholder could actually withdraw money from their corporation tax-free**.

The CRA also stated that they brought this situation to the attention of the Department of Finance Canada and that the civil servants at this Department "would take this into account when reviewing life insurance taxation" (this is a meaningless sentence regularly used by these civil servants to buy time and make everyone believe they'll actually do something about the problem). This was the first major warning issued and the civil servants were notified they had to act and quickly modify the law.

The second major warning

Tax Topics number 1682 was published on June 3, 2004. Penned by the late prolific writer and attorney David Louis and by attorney Michael Goldberg from Minden Gross, this five-page newsletter detailed this (all too) generous strategy. Tax Topics is a weekly newsletter published by Wolters Kluwer and is probably the most read tax newsletter by Canadian tax experts. And it is by reading this June 2004 edition that this author quickly understood the potential impact of this legal planning strategy that made absolute no sense from a tax policy point of view. Honestly, before reading this tax newsletter, this author, along with most tax experts, accountants, and legal experts in Canada were unaware this was even possible. From 2004 to 2016, our organization described this issue in detail in written materials for our training activities. And every year since 2004, we've said that this strategy would surely be extremely short-lived because the CRA had already notified the Department of Finance Canada of this problem and that it had been a top story in the Tax Topics newsletter. Our organization also published an editorial in September 2005 in a specialized financial magazine and we explained the ins and outs of such a transfer. We added that this strategy would not last for much longer.

In every tax bill submitted (and there have been many) or federal government budget adopted since 2004, we expected changes to be made to paragraph 148(7) of the ITA. And to our immense surprise, it never happened … until the March 22, 2016 federal budget. It took them 14 years to actually get off their butts and change the law!

Hundreds and hundreds of millions of dollars in tax revenue gone

Why was this strategy so popular? It's actually quite simple. During the 2000s, a large majority of professionals were able to incorporate their company after changes were made throughout Canada to the laws and regulations governing their professions. As a result, in addition to existing SMEs where life insurance policies of shareholders of the company could be transferred (if the policies were held individually), a ton of SMEs offering professional services (accountants, lawyers, physicians, dentists, etc.) incorporated their business and transferred their assets to the new corporation … including life insurance policies with a FMV that had significantly increased since they were first purchased.

Think this has only happened a few times since 2002? You would be terribly wrong. Although we'll never know the exact figures, we are aware of a multitude of cases were this has occurred. Cases that involved amounts varying between $50,000 and $800,000, and probably even more. Keep in mind that every year thousands of tax professionals (CPAs, financial planners, tax experts) take part in training activities and symposiums across Canada. And these professionals count numerous SMEs as clients. For instance, a CPA who took part in our training activities told us a few years ago he had overseen about 50 transfers of policies with a high FMV to corporations in order to take advantage of this legal tax exemption. And this occurred throughout Canada for nearly 15 years! We are in no way blaming tax experts for explaining this strategy to clients. After all, had they not, they would have been criticized for failing to mention it to their clients.

Head-scratching questions

You are most likely wondering the same thing we are. How was this "free ride" made possible and ignored by the civil servants at the Department of Finance Canada, the supposed "**trustees of our collective wealth**"? Don't they listen to the CRA's clear recommendations? Do they not stay informed just like tax experts in the private sector do by reading the publications necessary to keep their knowledge up-to-date? This example once again shows the carelessness and sloppiness of these civil servants in the face of a strategy that was well-known by

anyone with even an ounce of tax expertise. Even if the legislative change announced in 2016 included some kind of retroactive fix, the amount of money governments lost in tax revenue is simply colossal… And taxpayers are expected to tolerate this? "*Father, forgive them, for they do not know what they are doing*"

G. Automobile supplied by an employer and a personal use of 150%!

Everyone knows that "hockey players are able to give 110%", an expression that we also often hear in professional environments. Astonishingly, this kind of impossible math seems to be the case for some individuals with cars provided by an employer … cars used for personal reasons apparently 150% of the time! This is all due to the cars purchased by an employer being "overtaxed" on a disproportionate tax benefit. A "Good job, guys" goes out once again to the civil servants at the Department of Finance Canada, specifically those in charge of this tax policy. What's more, this situation has been brought to their attention nearly 15 years ago! Another tale of pure carelessness…

Two employees, same kind of car, 2.3 times more tax

To illustrate the problem, here's an example:

> Two employees work at ABC Inc. Both employees have been provided the exact same car by their employer: a 2016 Mazda CX-5 (see below for examples with 12 different models, all taken from real contracts). Both employees use their car 30% of the time for business and 70% of the time for personal reasons. In the first case, the car provided to the employee was purchased with a 36-month lease (no cash) standard contract between the employer and Mazda. In the second case, the employer decided to take advantage of a limited-time promotional offer from the manufacturer and purchased the car. The difference in how the car was purchased is supposed to have absolutely no bearing on the employee and everything else about the car is the same, right down to the colour and annual mileage. And yet … there are major differences for the employee. A taxable benefit will have to be added every year to the employee's income for their right to use the car for personal reasons (70% of the time). A second taxable benefit will apply to the operating costs paid by the employer for the car. **However**, in our example, the employee who is driving the purchased vehicle will have to deal with the first taxable benefit that will be 2.3 times the taxable benefit of the employee driving the vehicle leased by the employer (called the "standby charge benefit").

Obviously, the initial reaction would be to believe that the taxable standby charge benefit on the leased vehicle is too low. But our example shows otherwise. In fact, in the case of the leased vehicle, the taxable standby charge benefit is equal to 2/3 of the leasing cost, as per the *Canadian Income Tax Act*. In other words, a taxable standby charge benefit in the case of the leased vehicle is the same, in this example, as assuming the employee uses the vehicle 66.6% of the time for personal reasons (2/3 = 66.6%). In our example, this more or less corresponds to reality (the vehicle is used for personal reasons 70% of the time). In short, in the case of a vehicle provided to an employee and leased by the employer, when it is used for personal reasons between 50% and 100% of the time, it will be taxed more or less appropriately, maybe slightly overtaxed or undertaxed but nothing too dramatic. Keep in mind different rules apply when the vehicle is used for personal reasons less than 50% of the time.

However, when the vehicle provided to an employee has been purchased by their employer, the annual taxable benefit for a standby charge equals 24% of the cost of the vehicle (including taxes), or 2% per month (12 x 2% = 24%). In our example, based on a real contract, the taxable standby charge benefit for a 2016 Mazda CX-5 will be $9,319 per year (vs. $4,080 in the case of the leased vehicle). That means that the employee who drives a purchased vehicle will be taxed a standby charge benefit that is $15,717 higher than in the case of the other employee over the latter's three-year lease contract ($9,319 - $4,080 = $5,239 x 3 = $15,717)! With a marginal tax rate of 40%, that means the employee who drives the car purchased by their employer must pay $6,300 more in taxes and is therefore $6,300 poorer.

As we've explained above, the $4,080 taxable standby charge benefit (in our example) in the case of the leased vehicle corresponds to a personal use of 66.6%. Using the simple math rule of three, the $9,319 taxable standby charge benefit for the vehicle purchased by the employer means that the vehicle is used for personal reasons 152% of the time (if $4,080 = 0.6667, $9,013 = 1.523)!! That is just ridiculous. How can you use a vehicle 152% of the time? Think this is an unrealistic example? Check out the following link for 12 examples (Toyota, Audi, Subaru, Ford, BMW, Mazda, Nissan), all based on real contracts signed in the past few years (**http://www.cqff.com/informateur/automobile_employer.pdf**). The figures speak for themselves. The taxable standby charge benefit for an automobile leased by an employer for an employee is generally between 40% and 50% of the standby charge for the same vehicle that would have been purchased by the employer. It's such a ridiculous situation that it has become unthinkable for an employer to purchase a vehicle for their employee when the latter uses it for personal reasons for 50% or more of the time (the disparity isn't as catastrophic and progressively decreases when the vehicle is used for personal reasons less than 50% of the time because of the different formula used to calculate taxable benefits).

In our opinion, the tax system should be "more or less" neutral (without necessarily being perfect) when it comes to a company's financial decision to purchase or lease a vehicle for their employee. We are so far from this being the case. So where does the problem come from? Tax legislation regarding cars provided by an employer has not changed since 1981 (except for a 2003 modification in the case when a vehicle is used more than 50% of the time for business reasons)! Those of an older generation (including this author) remember that a lease contract for a new vehicle in 1981 was a rare thing and included an interest rate that varied between 27% and 35% (compare that with current rates that vary between 2% and 5%). Because the costs of leasing a vehicle include the estimated cost of depreciation for the duration of the contract and interest fees (in short, the real ownership costs—not operating costs—of the vehicle for the duration of the contract), is it really necessary to explain that what resulted in low disparities in 1981 now makes no sense whatsoever? How is it logical that when a vehicle is purchased, the taxable benefit over four years represents 96% of the vehicle's initial cost in this climate of low interest rates? Logic is nowhere to be seen in this situation. It has left the building!

Well aware for the past 15 years!

If you think that this absurdity (which is easily fixable, as we will demonstrate below) has not been brought to the attention of the civil servants at the Department of Finance Canada, you're very wrong. Even though this author has been aware of this issue for about 25 years, it is only in 2003 that our organization contacted representatives of the Department of Finance Canada in Ottawa to notify them of this obvious and unfair problem. After having described it in detail, concrete proof in hand, the individual responsible for these rules at the time strongly suggested we write to the Minister of Finance Canada to make him aware of the situation. We were happy to write to the Honourable Ralph Goodale (who is still a Minister with the current federal government) in order to get the problem fixed through the appropriate legislative modifications. Not only did we send a first polite and detailed letter on July 20, 2004, we also sent a second (as polite and as detailed) one on December 15, 2004. On May 6, 2005 (!) we finally received a very brief response from his cabinet stating our request would be included in the government's review of tax policies. There it is again, that meaningless sentence. It's used again and again by the staff at the Department of Finance Canada to make everyone believe they'll actually do something about the problem.

We then set out to make tax experts throughout the country aware of the problem (few of them knew about the issue). We submitted a detailed question with several concrete examples to the Department of Finance Canada for a federal roundtable during the *Congrès de l'APFF* (*Association de planification fiscale et financière*) in October 2005. Once again, a representative of the Department of Finance Canada told us they'd take it into account during their upcoming assessment of measures on vehicles. See where this is going? Nothing happened. Nothing. We once again questioned the Department of Finance Canada during the *Congrès de l'APFF* in October 2009 to get an update on what their stance was regarding their answer in 2005. Once again, they replied with a meaningless response: "The Department of Finance is continuously finding ways to improve the tax system while

taking into account the government's priorities and available budget." Let's remain polite: this is pure bull dung. First, the tax cost associated with a legislative change of this kind is relatively low (in practice, most employers in this situation have no other choice but to lease a vehicle … as long as they're aware of the immense disparity that exists). Second, current tax rules for an automobile purchased for an employee basically amount to a rip off. Is there anyone competent working on tax legislations at the Department of Finance Canada? Does no one care about fair and balanced rules for taxpayers? Finally, it must be said that Quebec's *Ministère des Finances* listened to our concerns several years ago and agreed that the current rules are completely bonkers. We even came up with potential solutions they could discuss with their federal counterparts… Which they tried to do, without success.

A simple solution

As in the case of every point discussed in our newsletters, we will outline a potential solution that is both simple and fair.

For vehicles provided by an employer to their employee, the annual taxable standby charge benefit should simply be based on the following formula for a leased vehicle:

$$\text{costs of leasing (including taxes)} \quad \times \quad \frac{\text{kilometres driven for personal use}}{\text{total kilometres driven}}$$

This specific formula should apply in every situation where the vehicle is being used for personal reasons (even if it is less or more than 50% of the time). It truly reflects the personal use related to the standby charge, to which would be added the taxable benefit associated with the operating costs. Keep in mind that lease payments normally reflect the estimated depreciation of the vehicle for the duration of the contract as well as financing costs.

In the case of a vehicle purchased by the employer, the formula should seek to sensibly emulate the results obtained with the costs of a lease. For the past several years, such a result would easily be obtained by lowering the standby charge benefit to about 16% or 17% of the cost (1.4% per month) instead of 24% of the cost (2% per month), multiplied by the ratio between the kilometres driven for personal use and the total kilometres driven. It's not a difficult solution… All we need is for the civil servants at the Department of Finance Canada to show a bit of willingness.

Electric cars and tax policies

When it comes to electric cars, the current tax policy is a pathetic mess. In terms of operating fees (fuel, maintenance, etc.) for a car provided by the employer, the taxable benefit for the fees paid by the employer for the personal use of the vehicle is calculated exactly the same way for an electric vehicle as it is for a gas-powered car: $0.26/kilometre in 2018. Even though the operating fees of an electric vehicle are much lower than a gas-powered car. However, the other taxable benefit associated with a vehicle provided by the employer (the standby charge explained above) is significantly higher for an electric vehicle because it costs much more for the employer (lease included), all other things being equal. Furthermore, the $8,000 grant offered by the government of Quebec does not, according to the CRA, reduce the "cost" of the vehicle in terms of the standby charge benefit, but it reduces the depreciable cost of the vehicle for the employer! In other words, it is much too costly for an employer to provide their employee with an eco-friendlier vehicle. How does this make any inkling of sense? When will these rules be reviewed? "*Father, forgive them, for they do not know what they are doing*"

H. The hunt for honest taxpayers … while fraudsters get away with billions of dollars

Here is another shining example of the ineptitude of the civil servants at the Department of Finance Canada, as you will see with two conflicting situations. On one hand, they are hunting down honest taxpayers and forcing

them to fill out useless tax information when the Canada Revenue Agency (CRA) receives this very same information from the taxpayers themselves and Canadian financial institutions every year.

On the other hand, as we uselessly add to the bureaucratic process for honest taxpayers (and if they are no so honest, the tax slips issued by Canadian financial institutions will quickly get them into hot water), the Department of Finance Canada has not taken any steps in the last decade to compel entrepreneurs who operate a restaurant to have electronic controls of their sales. The Quebec government for its part adopted legislation in 2006 making it mandatory for restaurant operators to install a sales recording module (SRM). A measure that **has had a resounding success**: Revenue Quebec has even received awards and global recognition for its innovation. As for the federal government and other provinces, we estimate that they actually lose $1.5 billion in tax revenue every year due to their inaction. That's an enormous amount of money over a decade! And the Department of Finance Canada continues to be content with doing nothing. Make no mistake, its civil servants are well aware of this situation… Why should honest taxpayers tolerate this? All the while, the Department of Finance Canada continues to publish press releases patting itself on the back for its efforts to help the middle class grow. This is a huge pile of bull crap. Let's take a closer look at these conflicting situations between honest taxpayers and fraudsters.

The hunt for honest taxpayers

There is a tax form (T1135) that needs to be filled out every year by taxpayers who have more than $100,000 at any time during the year in "specified foreign property", which is calculated using the costs of their investments. So far, so good and we have no problem with this rule. It's normal to try to limit tax evasion by implementing measures to make sure Canadian tax authorities are aware of investments held abroad. For example: an owner of condo units **for rent** in Florida or Europe will have to declare on form T1135 that he owns these assets and declare the annual income and the gain from the sale of these assets. However, form T1135 may also have to be filled out if the taxpayer owns assets in foreign stock market investments, such as shares listed on the New York Stock Exchange, **even if these are held via a securities broker in Canada** or another financial institution in Canada. However, every year a taxpayer receives dividends on their shares of Cisco, Apple, or AT&T, the Canadian financial institution will have to issue a T5 slip, along with a T5008 slip if the taxpayer sells the stock during the year. In brief, the CRA is already well aware of the details concerning the income or sale or these foreign investments held through a Canadian financial institution.

Thanks to the Access to Information Act, our organization was able to find out what percentage of Canadian taxpayers have to produce form T1135 **ONLY** because they own foreign stock market investments through Canadian financial institutions, and for which Canadian tax authorities are already aware. The answer? 68%! In other words, that means more than two-thirds of these taxpayers have to produce form T1135 **for no reason at all**. A useless, costly bureaucratic burden for these taxpayers. If they forget to produce this form within the deadline, they could be fined $2,500 (in addition to other penalties in more severe cases). Over the past decade, many taxpayers have failed to produce this form but have declared all their foreign income from foreign stock market investments (held via a Canadian financial institution). As a result, they either had to pay a $2,500 fine or rely on the CRA's Voluntary Disclosures Program (VDP) to avoid paying the fine. This onerous process has become a drain of time on the CRA's civil servants assigned to the VDP. Keep in mind, this is all for income and gains that have already been declared and that Canadian tax authorities are well aware of. Instead of focusing their efforts on real cases of tax fraud and trying to recuperate significant sums of money for the government, the CRA's civil servants assigned to the VDP have lost time and energy trying to fix these errors for honest taxpayers. All because of a form that is completely useless in this specific case.

"There is none so deaf as those who will not hear"

Many financial and tax experts have obviously contacted the Department of Finance Canada (and the CRA) to make them understand how the specific case of foreign stock market investments held via a Canadian financial institution should be excluded from the definition of "specific foreign property". This is a very easy fix: a simple

legislative amendment would add this case to the exclusions already outlined in the Act (as is the case for owners of personal-use condos located abroad).

Our organization has attempted to make them aware of the problem several times during roundtables with the Department of Finance Canada organized by the *Association de planification fiscale et financière* (*APFF*). Once again, we received the same vague, meaningless response from this Department. Several groups of financial institutions have also regularly attempted to make these tax authorities come to their senses. While tax and financial experts remain polite, rest assured they are completely frustrated and puzzled at this obstinacy on the Department's part that has resulted in a costly, inefficient bureaucratic process. Meanwhile, the real fraudsters are getting away with millions of dollars hidden abroad thanks to murky legal structures. Do you think these dishonest individuals care about form T1135 and its penalties? Not one bit. Honest taxpayers are being saddled with an extra layer of bureaucracy. It should be noted that in a document published in June 2018, the CRA has recognized the low risk of tax fraud in this specific case of foreign investments held via a Canadian financial institution! "*Father, forgive them, for they do not know what they are doing*"

Billions of dollars lost due to fraud in the restaurant industry

As mentioned above, Canadian tax authorities are wasting their time pursuing honest taxpayers but turn a blind eye to undeclared income in the restaurant industry (and we're not even going to mention, for now, the mess related to e-commerce).

The *ministère des Finances du Québec* tabled a budget on March 23, 2006 that included legislative changes in order to allow Revenue Quebec to compel the progressive implementation of "sales recording modules" (SRMs) in restaurants (and then bars) in order to prevent and decrease cases of tax fraud. The results were impressive and extraordinary. And yet, nothing has been done by the federal government to emulate this success. According to data published in June 2017, Revenue Quebec has eliminated more than 60% of the black market in the restaurant industry, decreasing it from 17.5% to 6%. Since November 2011, Revenue Quebec has been able to collect nearly $2 billion in additional taxes through the Quebec Sales Tax (QST), personal income taxes, corporate taxes, and withholding of taxes, including $300 million over the past year alone. This measure has also benefited federal tax authorities (amounts not included in the aforementioned figures). If Revenue Quebec has collected $300 million over the past year, we can infer that the federal government has been able to collect approximately $200 million in 2017 (the GST is lower than the QST, however the GST is not the only federal source of income). It is not outlandish to believe that federal tax authorities and tax authorities in other provinces are missing out on more than $1.5 billion in tax revenue every year. Instead, that money is going **straight into the pocket of fraudsters**. All while honest taxpayers, including those in the middle class, are paying for the inaction of Department of Finance Canada.

It is worth mentioning again that Revenue Quebec has earned several awards for their technological innovation, including the Gold award from the Institute of Public Administration of Canada in 2012.

It goes without saying that over the last few years, technology has evolved at an impressive rate. It is only a matter or time before Revenue Quebec puts to use technologies that are even more innovative, cloud computing for instance, to minimize tax evasion to the benefit of honest taxpayers and public services offered by the government of Quebec. We say bravo to Quebec tax authorities! As for the federal government, we can only declare "*Father, forgive them, for they do not know what they are doing*."

I. Why do we write these shocking newsletters?

As we've stated in our first newsletter published in September 2017, we could no longer stand by in the face of mounting gaffes from the civil servants at the Department of Finance Canada, especially over the past 15 years. No one from that Department is doing anything to fix these problems. Mistakes, incompetence, laxity, and astounding carelessness from these civil servants are depriving federal coffers of billions of dollars. **And we are**

only getting started. It has become an unfair system that penalizes taxpayers, including those in the middle class, who must bear the burden of a cumbersome tax process all because of the inaction of civil servants who are supposedly the “trustees of our collective wealth”. After the publication of our first newsletter, several renowned tax experts told us someone was finally saying out loud what many were thinking. Others told us we were being rude to the civil servants. To the latter, we will simply say that continuing to tolerate the unacceptable incompetency of civil servants is to endorse the consequences of their mediocrity and excuse the negative impacts on taxpayers. We will not be kept silent and we refuse to condone this situation.

When will the House of Common’s Standing Committee on Finance look into these issues? When will the Standing Senate Committee on National Finance take an interest in these blunders? When will federal MPs study this robbery of public funds allowed by their own civil servants who are supposedly tax experts? When will the Auditor General of Canada recognize the severity of these problems?

As stated in our first newsletter, our expertise mainly focuses on Canadian and Quebec income tax rules, not international tax laws or consumption taxes (such as the GST). If we did take those into account, we can only imagine how much more fodder for these newsletters we’d have!

To be continued in our next newsletter with several billions in play and simply titled “The Cheaters”.

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