



29 July 2014

Mr. Andrew Treusch
Commissioner and Chief Executive Officer
Canada Revenue Agency
555 MacKenzie Avenue, 7th Floor
Ottawa, Ontario K1A 0L5

Re: PBO Information Request IR0102: Tax Gap Estimate

Dear Mr. Treusch:

Thank you for your letter dated 20 May 2014 in relation to my request for access to taxpayer information needed to estimate the tax gap.

The Parliamentary Budget Officer (“PBO”) is, like Canada Revenue Agency (“CRA”), bound to protect the confidentiality of taxpayer information by s 241 of the *Income Tax Act* and s 295 of the *Excise Tax Act*. I am also prohibited from releasing the data we receive except where essential for the performance of my mandate under s 79.4 *Parliament of Canada Act*. To ensure that CRA and the PBO can meet their obligations to protect the security of taxpayer information under these provisions, we would be willing to enter into a comprehensive memorandum of understanding of the type you suggest. As we have suggested before, we would be willing to perform our analysis on CRA premises to allow CRA to maintain complete control over the security of taxpayer information. The PBO has no intention of identifying taxpayers or of releasing information that could allow them to be identified.

You indicated that it is the CRA’s policy to provide only as much tax data as is strictly necessary. Based on methodologies used in other jurisdictions, the PBO requires access to taxpayer-level information to prepare a credible estimate of the tax gap. Your staff have stated that CRA’s “standard confidentiality controls” will likely result in virtually all of the aggregate data we requested being suppressed. Further, CRA staff have acknowledged that this would render the dataset ineffective for the purpose of analyzing the tax gap. It has been further suggested by CRA staff that a higher level of aggregation would do little to reduce data suppression, while undermining the reliability of any conclusions drawn about the entire population based on the non-representative sample audited by CRA. It is simply not possible to produce a reliable estimate of the tax gap without access to taxpayer information.

Aggregation also introduces an inordinate delay; the Assistant Commissioner proposes six months to deliver the data. As you are likely aware, the PBO’s results are used to help parliamentarians scrutinize

the nation's finances and hold the government to account. The Assistant Commissioner is currently proposing to deliver the data six months from the signing of a memorandum of understanding at a cost of \$140,000. Since the PBO first requested this data in December of 2012, the government has had an opportunity to introduce two budgets, both of which have committed to closing tax loopholes and improving the fairness and integrity of the tax system, which were made without the benefit of analysis of the tax gap. A six-month delay would allow the government to release a third such Budget. As such, both the delay and the cost appear disproportionate to me as it may very well appear to Parliament.

It is also important that the PBO have as much control as possible over the analytical process to assure parliamentarians that strategic decisions are not biased by the organization's own interests. Aggregation thus also jeopardizes the timeliness and integrity of the PBO's analysis.

Moreover, the PBO's analysis will help maintain the integrity of the tax system. I'm sure you are aware of the finding in your 2013 CRA Corporate Research that, among intermediaries,

[...] there was a perception that as soon as tax lawyers are brought in by the wealthy, the CRA backs off, and in the eyes of those people, the CRA needs to follow through on some of those 'larger fish' to preserve the integrity of the system.¹

The Honourable Senator Downe expressed similar concerns when asking the PBO to estimate the tax gap. Catching those 'larger fish' requires that Parliament and CRA understand the scope and nature of tax evasion and the financial yield of resources allocated to enforcement programs. This has certainly been the experience in other comparable jurisdictions. For example, the US Department of the Treasury's Office of Tax Policy has stated:

Understanding the tax gap and what its components are allows the legislative and executive branches of government to make better decisions about tax policy and the allocation of resources for tax administration.²

Your letter expressed concern that s 241 of the *Income Tax Act* may bar CRA from disclosing taxpayer information to the PBO. That section allows you and your officials to:

(k) provide, or allow inspection of or access to, taxpayer information to or by any person otherwise legally entitled to it under an Act of Parliament solely for the purposes for which that person is entitled to the information (emphasis added)

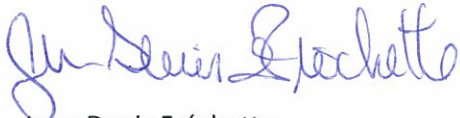
In the absence of s 241 of the *Income Tax Act*, the PBO is clearly entitled to the information requested under s 79.3(1) of the *Parliament of Canada Act*. Therefore CRA may provide the PBO with access under s 241(4)(k) of the *Income Tax Act*. An identical exception exists under s 295(5)(c)(ii) of the *Excise Tax Act*. Nevertheless, CRA officials have suggested to us that this section does not apply because the PBO s 79.3 does not specifically entitle the PBO to taxpayer information. I'd be grateful if you could clarify.

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² United States, US Department of the Treasury Office of Tax Policy, *Understanding the Tax Gap*, online <<http://www.irs.gov/uac/Understanding-the-Tax-Gap>>.

For now, it seems to me that the CRA is authorized to disclose tax data required for the performance of my mandate, and that doing so in this case is consistent with CRA policies and interests. I would appreciate that you direct your staff to proceed on that basis.

Yours sincerely,



Jean-Denis Fréchette
Parliamentary Budget Officer

c.c.: Mr. Douglas Nevison, Assistant Secretary to the Cabinet, Privy Council Office, Liaison Secretariat for Macroeconomic Policy
Ms. Catherine Bennett, Assistant Commissioner, Strategy and Integration Branch, Canada Revenue Agency