

**CANADA REVENUE AGENCY (CRA): Follow-up to the appearance by the Department of Finance
before the Standing Senate Committee on National Finance(NFFN) – February 27, 2024**

**AGENCE DU REVENU DU CANADA (ARC) : Suivi de la comparution par le Ministère des finances
devant le Comité sénatorial permanent des finances nationales – le 27 février 2024**

Question Number	Date & time of NFFN meeting	Senator that asked the question	Text of question from the unrevised NFFN transcript (<i>verbatim of proceedings as they were taken, in the original spoken language</i>)	CRA Response
Numéro de question	Date et heure de la réunion du Comité sénatorial permanent des finances nationales	Sénatrice ou sénateur qui a posé la question	Texte de la question tiré des transcriptions non révisées du Comité sénatorial permanent des finances nationales (compte rendu mot à mot des délibérations)	Réponse de l'ARC
1	February 27, 2024 27 février 2024	Senator Kim Pate Sénatrice Kim Pate	<p>Senator Pate: <i>Subclause 66(1) of the bill proposes a preamble to the Income Tax Act's general anti-avoidance rule. It states that the rule: (b) strikes a balance between (i) the Government of Canada's responsibility to protect the tax base and the fairness of the tax system, and (ii) taxpayers' need for certainty in planning their affairs. Tax fairness experts fear that the addition of this language acknowledging needs for "certainty in planning" will be used by wealthy taxpayers to defend avoidance behaviours in court. They have suggested making a stronger statement establishing fairness as the foremost principle of Canadian tax law. Can you clarify the intentions of this proposed preamble? As well, how do you expect it to be understood by courts adjudicating on these issues in the future, based on past decisions? Are there any estimates that you can provide regarding how much public revenue currently being lost via tax avoidance could be captured under this and other amendments to the general anti-avoidance rule in Bill C-59? If you're not able to provide it all, perhaps you could provide some of those details in writing.</i></p> <p>Lindsay Gwyer, Director General, Legislation, Tax Legislation Division, Department of Finance Canada:</p>	<p>The CRA does not track revenues collected, or not collected, based on the provisions of Canada's tax rules that lead to the establishment of an assessment. Furthermore, as the General Anti-Avoidance Rule (GAAR) can be applied as a primary or an alternative argument when a taxpayer attempts to circumvent or exploit the intent of any number of Canada's tax rules, it is not feasible to quantify that amount.</p> <p>The GAAR's main purpose is:</p> <ul style="list-style-type: none"> • to deny tax benefits to any taxpayer that, although complying with a literal reading of the provisions of Canada's tax rules, is not necessarily in accordance with the object, spirit or purpose of the rules; • act as a deterrent as the risk-level to the taxpayer increases by engaging in tax avoidance arrangements. <p>From the enactment of the GAAR in 1988 to March 2021, the application of the GAAR was considered at the audit stage in approximately 1,600 cases (a number of these "cases" represent transactions involving multiple taxpayers spanning multiple years and, as a result, the number of taxpayers reassessed exceeds this number considerably).</p>

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		<p><i>Sure. Regarding the first part of the question, the language in the proposed preamble is largely inspired by language that was in the original explanatory notes and white paper that accompanied the GAAR in 1988. The principle of certainty is something that is regularly argued by taxpayers as a reason why both the GAAR shouldn't be extended and, in individual cases where the GAAR or where other anti-avoidance rules are applied, taxpayers regularly argue that they shouldn't be applied in those situations because it creates uncertainty for them. That's a principle that's been recognized in many cases over the past 30 years. The purpose of the proposed preamble is to go back to those statements that were made in 1988 and to emphasize the fact that, yes, it is important for taxpayers to have certainty but, at the same time, the GAAR necessarily imposes some aspect of uncertainty because it necessarily applies in situations where a taxpayer has technically complied with the rules but the result that they have obtained is abusive. By necessity, that will create some uncertainty as to how the rules apply in a particular situation. That's really necessary in order to ensure that the rules can be applied in a fair way that's fair for society and that results in those who should be paying the taxes that they should be paying. I would say the purpose of the proposed preamble is really to ensure that aspect of the analysis doesn't get lost in comparison to the certainty aspect, which really has been something that courts have focused on a lot.</i></p> <p>Senator Pate: <i>Are there estimates in terms of what that has resulted in as far as public revenue loss?</i></p> <p>Ms. Gwyer: <i>There's no specific revenue estimate that was provided for the measure. Partly, it would be very difficult to cost it because it has implications across the entire Income Tax Act, and it's also a rule that's intended to make sure that the revenues that should be generated from other</i></p>	<p>L'ARC ne fait pas le suivi des recettes perçues ou non perçues en fonction des dispositions des règles fiscales du Canada qui ont mené l'établissement d'une cotisation. De plus, étant donné que la disposition générale anti-évitement (DGAE) peut être invoquée comme argument principal ou subsidiaire lorsqu'un contribuable tente de contourner ou d'exploiter les règles fiscales du Canada, il n'est pas possible de quantifier ce montant.</p> <p>Les objectifs principaux de la DGAE sont :</p> <ul style="list-style-type: none"> • de refuser à tout contribuable des avantages fiscaux qui, bien qu'ils se conforment à une lecture littérale des dispositions des règles fiscales du Canada, ne sont pas nécessairement conformes à l'objet, à l'esprit ou à l'objectif des règles ; • de produire un effet dissuasif puisque le niveau de risque du contribuable augmente en participant à des arrangements d'évitement fiscal <p>De l'adoption de la DGAE en 1988 jusqu'en mars 2021, l'application de cette dernière a été prise en considération à l'étape de la vérification dans environ 1600 cas (un certain nombre de ces « cas » représentent des opérations concernant de multiples contribuables sur plusieurs années et, par conséquent, le nombre de contribuables ayant fait l'objet d'une nouvelle cotisation dépasse considérablement ce nombre).</p>
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		<p><i>rules are actually, in fact, generated. I could give you an idea. Between 2016 and 2021, \$4.1 billion was assessed by CRA using the GAAR. That was both under the primary position as well as alternative positions. Sometimes the CRA would assess someone on the basis that they haven't complied with the technical rules, but then the alternative argument that if in fact they have complied what they have done is abusive, so the GAAR would re-characterize that. The \$4.1 billion reflects those two positions. That's assessed, so that doesn't necessarily mean that all of that would actually be collected. Taxpayers can object to their assessments, so some of that could be successfully challenged and it wouldn't necessarily all be collected, but I think it provides a sense of the magnitude of the issue.</i></p> <p>Senator Pate: <i>Do you have that data of how much is collected versus the assessment?</i></p> <p>Ms. Gwyer: <i>I don't have that information. We could see what we have. It would be something CRA would have. I don't know what we could provide, but we could look into it.</i></p> <p>Senator Pate: <i>That would be great, thank you.</i></p> <p>The Chair: <i>You could provide that in writing, please, through the clerk?</i></p> <p>Ms. Gwyer: <i>Like I said, CRA would have that information, not Department of Finance, but we could see what is available.</i></p> <p>The Chair: <i>Thank you.</i></p>	
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