

BAY STREET AND TAX HAVENS

**CURBING CORPORATE
CANADA'S ADDICTION**





Bay Street and Tax Havens: Curbing Corporate Canada's Addiction

November 2017

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EXECUTIVE SUMMARY

THE 60 BIGGEST PUBLIC COMPANIES on the Toronto Stock Exchange (TSE) have over 1,000 identifiable subsidiaries or related companies in places known to be onshore and offshore tax havens. The high number of Canadian corporate subsidiaries operating in these tax haven jurisdictions raises fresh concerns about the full extent of corporate tax avoidance by Canadian-based companies.

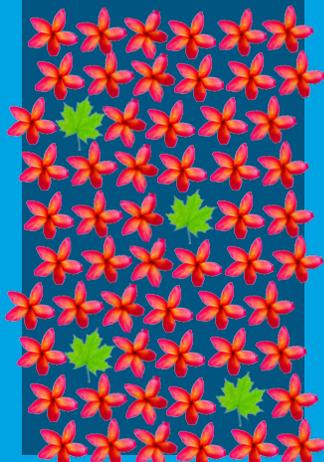
Only four of those listed 60 companies report no subsidiaries in known tax haven jurisdictions — while companies such as Valeant Pharmaceuticals International Inc. and Sunlife Financial Inc. have over 50 each.

In the spring of 2017, the top 60 TSE companies had a total of 1,021 subsidiaries and related companies in known tax havens. This includes U.S. and European tax haven destinations such as Delaware and the Netherlands, as well as those in the Caribbean and island nations usually seen as tax havens. All of the 10 largest companies have multiple subsidiaries in known tax haven locations.

This report’s findings will be an underestimation, as the access to data is limited due to secrecy and poor government transparency both in Canada and in the tax haven nations. The use of shell and numbered companies makes the data more opaque. Leaks of actual bank account data from countries like Panama and the Bahamas show the numbers of subsidiaries are orders of magnitude higher.

This is no small concern. Financial flows to tax havens rose dramatically from the early 1990s to 2015, dipping down only slightly after 2015. Canadian foreign direct investment (FDI) in tax havens grew from \$21 billion in 1994 to \$284 billion in 2016. Barbados, Luxembourg, and the Cayman Islands feature in the top three.

Of the 60 biggest companies on the TSE, only FOUR reported no subsidiaries in known tax haven jurisdictions.



Canadian foreign direct investment (FDI) in top 10 tax havens, 1994 and 2016:



Source: Statistics Canada Cansim Table 376-0051

Companies often argue that their investments in those jurisdictions are legitimate businesses and not brass plate subsidiaries.

Although this will be true of some of the business investment, the low employment numbers indicate it is not the case for the bulk of the Canadian investment in the tax havens listed in this report.

The lower tax rates and policy competition with tax havens have meant that individual taxpayers are picking up the slack. Personal income tax revenue has grown as a share of federal government's total revenue from 30 per cent in the 1970s to almost 50 per cent in 2013. The share of corporate income tax dropped over the same period from 20 to 13.6 per cent.

Companies often argue that their investments in those jurisdictions are legitimate businesses and not brass plate subsidiaries. Although this will be true of some of the business investment, the low employment numbers indicate it is not the case for the bulk of the Canadian investment in the tax havens listed in this report.

There is a massive disconnect between employment levels and investment in the tax haven jurisdictions. In 2014, the foreign subsidiaries in select non-tax haven countries employed a range from 1,244 to 2,760 employees per \$1 billion in assets while the ratio for the tax havens ranged from one employee to 250. This would suggest many of the off-shore subsidiaries have been set up primarily as a way to shift profits and reduce taxes.

Canadians for Tax Fairness estimates federal and provincial governments are losing out on between \$10 billion and \$15 billion a year in revenues from the reported use of tax havens by corporations. For Canada's economy to weather the coming winds of technological change and climate adjustment, we will need to capture those funds and invest them wisely in the social and physical infrastructure needed to keep our economy healthy. That \$10 billion (the low end of the estimates) is enough to fund:

- A Pharmacare program;
- Affordable quality public childcare;

In 2014, subsidiaries in non-tax haven countries employed 1,240 to 2,760 employees per \$1 billion in assets.



In the tax havens, subsidiaries employed from one employee to a maximum of 250.



- Free university tuition across the country;
- Just transitions for workers; and
- Improved infrastructure in First Nations communities.

These are among the priorities Canadians say they want so that Canada can be a healthy, prosperous place.

The government has been taking action to crack down on tax evasion by wealthy individuals, but has not effectively gone after corporations using tax haven subsidiaries to shift profits and avoid taxes. Canadians for Tax Fairness estimates that corporate tax avoidance from the use of offshore structures (much of it quite legal because of lax corporate tax laws), may be responsible for double the revenue loss as that resulting from individual use of tax havens.

Canada has recently engaged in international and national efforts to address tax haven use. But critics warn that action so far does little to tackle the structures that allow the separation of revenue from operations and the shifting of profits offshore.

This report uncovers a small part of the puzzle that is tax haven use for tax avoidance. The data in this report is alarming, but it is just the tip of the iceberg as the recent leak from Appleby shows. The companies and the Canadian government have a lot to explain.

Justin Trudeau will be hosting the next G7 summit in Canada in June 2018 — this provides an opportunity for him to deliver on his promise to tackle tax havens.

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Corporate social responsibility should include paying a fair share of taxes to a country that provides the health and education of a workforce, infrastructure and rule of law, and invests in research and innovation.

Summary of Recommendations

See the detailed recommendations on page 37.

- 1. YOU CAN'T FIX WHAT YOU HAVEN'T MEASURED.** The Canada Revenue Agency should immediately begin the work to assess the tax gap from tax havens use and report fully to Canadians.
- 2. UPDATE YOUR TREATIES.** Canada should commit to renegotiating tax treaties that allow corporations to shift profits and then repatriate that money — untaxed — putting a reasonable floor on tax payments.
- 3. RE-DIRECT NEW RESOURCES.** The Minister of Revenue should present Canadians with a clear action plan to investigate and prosecute corporate tax dodging that involves the use of tax havens.
- 4. UPDATE YOUR LAWS.** Government auditors, investigators, and lawyers need stronger laws to crack down on corporations gaming the tax system, including mechanisms like economic substance requirements, caps on interest payments to offshore subsidiaries, and a withholding tax.
- 5. SHINE A LIGHT.** A critical defense against illegal activities is transparency. Canada and the provinces need to establish public corporate registries of beneficial owners.
- 6. JOIN FORCES.** Canada needs to be an active participant in and supporter of stronger international efforts to address base erosion and profit shifting, taking a leadership role on these issues through the UN, G7, G20, and OECD.
- 7. DO THE RIGHT THING: CORPORATIONS** Corporate social responsibility should include paying a fair share of taxes to a country that provides for the health and education of a workforce, infrastructure and rule of law, and invests in research and innovation.
- 8. DO THE RIGHT THING: TAX PROFESSIONALS** Professional associations can provide leadership by taking a public position against the use of tax havens for Canadian corporations.

Photo courtesy Bill Badzo/Flickr



Introduction

THE LARGEST 60 PUBLICLY-TRADED companies (top 60) on the Toronto Stock Exchange (TSE) include familiar and iconic Canadian names. Many of their boards and CEOs rank amongst Canada’s wealthiest. Most of them make profits in Canada and they prosper because of the stability and infrastructure this country offers.

But are all the profits made in Canada taxed in Canada? Or are Canadian corporations shifting some of their profits to low-tax or no-tax jurisdictions to reduce their tax responsibilities at home? And are regular taxpayers picking up the slack?

Economic inequality — the uneven distribution of income and wealth — has become a defining issue of our age. Canada has seen a great surge in inequality since the 1980s, and it remains stubbornly high today. Inequality has been shown by mainstream institutions like the International Monetary Fund to be dragging down our economic growth. A key part of the challenge is that Canada’s wealthy and large corporations are no longer paying their fair share. Whether this is being accomplished through hiding wealth in tax havens, or through government enacting tax breaks that primarily reduce taxes on the wealthiest, the effects are the same.



can take advantage of the weaknesses in current rules to reduce their tax burden at the same time when other taxpayers face growing burdens that they cannot avoid.” — *Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration, as quoted in Le Monde interview published by the International Consortium of Independent Journalists, November 7, 2014.*



The revelation that the giant accounting firm KPMG had set up a tax scheme in the Isle of Man for its wealthy clients and then fought the Canada Revenue Agency in the courts

to avoid having to reveal the identifies of its clients shows the key role played by “facilitators,” banks, accounting firms, law firms, and wealth management firms that help clients to make use of tax havens.

Photo courtesy 123Oslo/Flickr

There has been a heightened level of public scrutiny of tax havens since the April 2016 leak known as the Panama Papers. Many Canadians and Canadian firms were among the names found in the leak. But little has changed in terms of tax haven usage or Canadian law on tax havens.

Tax havens are an expedient tool for both illegal tax evasion and tax avoidance within the letter of the law, and are thus a key piece in the puzzle for solving the inequality problem.¹

There has been a heightened level of public scrutiny of tax havens since the April 2016 leak by the International Consortium of Investigative Journalists of a database of over 11.5 million documents from the Panamanian law firm Mossack Fonseca. Commonly known as the Panama Papers, these documents allowed the identification of more than 200,000 offshore entities, from over 200 countries, including Canada. Many Canadians and Canadian firms were among the names found in the leaked papers. This was only one of many leaks. But little has changed in terms of tax haven usage or Canadian law on tax havens.

The revelation that the giant accounting firm KPMG had set up a tax scheme in the Isle of Man for its wealthy clients and then fought the Canada Revenue Agency in the courts to avoid having to reveal the identifies of its clients shows the key role played by “facilitators,” banks, accounting firms, law firms, and wealth management firms that help clients to make use of tax havens.

This report unpacks Canada’s cozy relationship with tax havens by identifying known tax haven jurisdictions and corporate subsidiaries and related companies in those jurisdictions linked to the largest 60 companies listed on the Toronto Stock Exchange. We also look at the value of Canadian foreign direct investment being channeled into the top Canadian tax haven destinations. The report then looks at how the Canadian government has been enabling tax haven use and what needs to be done to tackle tax haven abuse.

¹ This report acknowledges the important differences between tax evasion and tax avoidance. Using Canada Revenue Agency definitions, “tax avoidance” involves minimizing tax by contravening the object and spirit — but not the letter — of the law (the CRA also uses the term “aggressive tax planning”), whereas “tax evasion” involves deliberate under-reporting of tax payable by concealing income or assets and by making false statements.



Methods and limitations

THE REPORT USES A VARIETY of sources, cross-referenced. First, we select known tax haven jurisdictions, and then we identify corporate subsidiaries and related companies of the biggest 60 companies on the Toronto Stock Exchange in those countries.

Selecting Canadian top tax havens

The top Canadian tax haven jurisdictions are selected by using national and international tax haven lists. The report uses the list compiled by Tax Justice Network (TJN) for its Financial Secrecy Index 2015.² Other tax haven lists also referenced include the IMF Offshore Financial Centers 2007 (including Delaware, Netherlands),³ the U.S. Stop Tax Havens Abuse Act 2015, and the EU Blacklist 2015.⁴

However, the international tax environment is quickly changing and those lists are highly political, subject to change, and less reliable than the TJN list. Section 3 describes further some of the criteria used for identifying jurisdictions that are being used as tax havens.



The top Canadian tax haven jurisdictions are selected by using national and international tax haven lists.

² financialsecrecyindex.com/introduction/fsi-2015-results

³ The initial IMF list was published in 2000 as part of the Offshore Financial Assessment Program and updated until 2008 as part of ongoing assessment. imf.org/external/NP/ofca/OFCA.aspx

⁴ The EU blacklist was published by various media outlets although the EU no longer makes that list available. eubusiness.com/news-eu/economy-politics.120n

Jurisdictions identified for this report as meeting the criteria for a tax haven:

Anguilla	Delaware	Mauritius
Bahamas	Gibraltar	Netherlands
Barbados	Guernsey	Ireland
Belize	Hong Kong	Panama
Bermuda	Ireland	Singapore
British Virgin Islands	Jersey	Switzerland
Cayman Islands	Luxembourg	Turks and Caicos
Cyprus	Malta	

Identifying TSE corporate subsidiaries and related companies

This report chose to look closely at the largest 60 publicly traded companies on the Toronto Stock Exchange by market capitalization. To identify their subsidiaries and related companies,⁵ this report cross-references that list of companies with the known tax haven jurisdictions identified above.

Corporate subsidiaries and related companies in those jurisdictions were identified using information from:

- Public filings from SEDAR, a mandatory document filing and retrieval system for Canadian public companies;
- Corporate filings held on EDGAR, the database of the Security Exchange Commission; and
- Company registry databases.

The data sources listed above for identification of corporate subsidiaries and related companies each have their limitations and will underestimate the numbers (see Appendix 1 for a more detailed description of these sources and their limitations). Taken in combination, however, they provide a compelling picture.

Caveats, scope, and limitations

There is no suggestion that any of the companies identified in this report have engaged in tax evasion or contravened any tax laws. A company's presence in a country that meets

⁵ We use the term "related company" to cover a variety of relationships, e.g., parent company, subsidiary company, shell company. Relationships between the companies vary and are often unclear.

the definition of a tax haven does not necessarily mean that company is engaging in tax evasion or avoidance.

There is limited data collected by the government on corporate involvement in foreign jurisdictions and secrecy in some of those jurisdictions make that hard. This lack of transparency impedes the ability of researchers to track and report on corporate involvement in tax havens. The data in this report suffers from those gaps. This report will not be comprehensive and will contain inaccuracies as a result.

The numbers in the data set we pulled are high, but the real numbers are orders of magnitude higher. Knowing the limitations on the publicly available data, we triangulated our corporate data with data in the leaked files available through the Offshore Leaks Database maintained by the International Consortium of Investigative Journalists.⁶

As expected, it is an underestimate. The number of companies reported as linked to the top 60 TSE companies in the leaked data are orders of magnitude larger. The ICEJ does not report specifically on subsidiaries and there will be data gaps stemming from the reliance on leaked data. Thus, we rely on the publicly available data for reported and inferred subsidiaries for the purposes of this report with the caveat that it will be an underestimate.

The distinction between productive foreign investment and investment for the purposes of tax avoidance or evasion is outside the scope of this report. However, we use the ratio of employment to investment as a rough proxy. This will be an imperfect picture as some companies may have substantive investment that has low labour intensity and others may have employees in the jurisdiction but still be involved in actions focused on tax avoidance or evasion. However, the discrepancies in the numbers are large enough that the data tells an important story.

A full accounting of the effective tax payments of the individual corporations is beyond the scope of this report. We do pull data, where available from other studies that have explored the effective tax payments by Canadian companies and reference their chosen methodologies.

What has been recorded for this report is indicative only; the data should be verified and expanded by the Canadian government for the purposes of policy change and enforcement.

⁶ International Consortium of Investigative Journalists, Offshore Leaks Database. icij.org/investigations/paradise-papers/explore-politicians-paradise-papers/

SUMMARY OF LIMITATIONS

- There is no suggestion that any of the companies identified in this report have engaged in tax evasion or contravened any tax laws.
- A company's presence in a tax haven does not mean that company is engaging in tax evasion or avoidance.
- There is limited data collected by the government and secrecy in some of the jurisdictions. The data in this report suffers from those gaps.
- This report is not comprehensive and will contain inaccuracies as a result of inadequate data.
- The numbers in the data set we pulled are high, but the real numbers are orders of magnitude higher.
- We use the ratio of employment to investment as a rough proxy. This will be an imperfect picture.
- Data in this report is indicative only; it should be verified and expanded by the Canadian government.



Defining a tax haven

THERE IS NO SINGLE AGREED DEFINITION of what constitutes a tax haven. The first formal definition came from the Organisation for Economic Co-operation and Development (OECD) in the late 1990s. The International Monetary Fund (IMF), the European Union, the United States, and the Tax Justice Network have also generated definitions and corresponding lists.

The original OECD analysis was based on a four-part definition including:

- No or low effective tax rate;
- Ring-fencing where preferential tax regimes are insulated from the domestic economy;
- Inadequate regulatory supervision and financial disclosure; and
- Lack of effective exchange of information.⁷

Civil society further considers tax havens as jurisdictions that intentionally create legislation for the primary benefit and use of non-resident individuals and entities or harmful tax competition.⁸

More recently, emphasis has shifted toward the willingness of a country to cooperate on tax transparency and reform, with the level of secrecy as the defining features of tax havens. The OECD now focuses exclusively on a declining number of what it calls “non-cooperative” jurisdictions.⁹

For non-governmental organizations, while a “zero or low tax rate” continues to be a defining feature, lack of cooperation with international processes against tax avoidance (including

7 OECD, “Promoting Transparency And Exchange Of Information For Tax Purposes,” 2010, oecd.org/newsroom/44431965.pdf

8 Tax Justice Network, Research Briefing, Secrecy Jurisdictions, taxresearch.org.uk/Documents/Secrecyjurisdiction.pdf

9 OECD, “The Global Forum on Transparency and Exchange of Information for Tax Purposes,” oecd.org/ctp/harmful/43757434.pdf

Although the label “tax havens” often seems to be applied primarily to small island states, they are found in various formations across the globe, from Delaware in the United States, to Hong Kong, to European Union countries like Luxembourg, Ireland, and the Netherlands.



measures to increase financial transparency) and secrecy have become more prominent factors as well.¹⁰

The Tax Justice Network, for example, considers the essence of tax havens to revolve around two inter-related kinds of secrecy:¹¹

1. **STRONG BANK SECRECY:** information cannot be obtained from banks and other financial institutions for official purposes such as tax collection; and
2. **SECRECY OF LEGAL ENTITIES:** information is not available or obtainable about companies, corporations, trusts, foundations, or other legal entities, such as the beneficial owners, details of persons with power to determine the use of assets, or financial accounts.

The crux of the tax haven problem hinges on the ability of a company to geographically separate their activity, revenue, and profits. Thus, the tax haven analysis needs to look beyond low statutory rates and secrecy to tax preferences that can significantly reduce the effective tax rate. These include preferential treatment of interest and investment income as well as income related to intellectual property, such as trademarks and patents. Companies use these tax advantages to shift profits through transfer ‘mispricing.’ For example, the preferential treatment of interest income and income from intellectual property in Delaware has meant that it has become a very popular destination for subsidiaries. Generally, these types of arrangements are why the United States is becoming popular as a tax haven.

Although the label “tax haven” often seems to be applied primarily to small island states, there are other jurisdictions that provide either tax exemptions like the Delaware example above or high levels of confidentiality in order to attract financial activity. European Union countries are not immune; many corporations are known to channel profits through brass-plate subsidiaries in low-tax Luxembourg, Ireland, and the Netherlands.

A study of the 10 largest extractive sector companies found that Delaware accounted for the highest number of subsidiaries, with the Netherlands being second.¹²

10 Oxfam International, “Tax Battles: the dangerous race to the bottom on corporate tax,” Oxfam Policy Paper, December 2016. Tax Justice Network, “Identifying Tax Havens and Offshore Financial Centres,” Tax Justice Network, 2007.

11 For a full list of the TJN secrecy indicators see Tax Justice Network, Financial Secrecy Index, 2015, financialsecrecyindex.com

12 Publish What You Pay, “Piping Profits,” actionaid.org/sites/files/actionaid/pwyp_norway_piping_profits_final.pdf

The
Economist

“If you define a tax haven as a place that tries to attract non-resident funds by offering light regulation, low (or zero) taxation and secrecy, then the world has 50–60 such havens.”

— *The Economist*,
February 17, 2013



TSE companies in tax havens

THE 60 LARGEST COMPANIES on Canada's Toronto Stock Exchange have over 1000 subsidiaries, joint ventures, or related companies in tax haven jurisdictions identified in this report. This includes U.S. and European tax haven destinations such as Delaware and the Netherlands. All of the 10 largest companies have multiple subsidiaries and related companies in known tax haven locations. Only four of those listed companies reported no subsidiaries in known tax haven jurisdictions – while companies such as Valeant Pharmaceuticals International Inc. and Sunlife Financial Inc. have over 50 each.

A few, such as George Weston Ltd. have chosen one location in which to set up. In Weston's case, it has three separate companies set up in Delaware. More commonly, many of the largest companies have multiple subsidiaries or related companies in multiple tax haven jurisdictions.

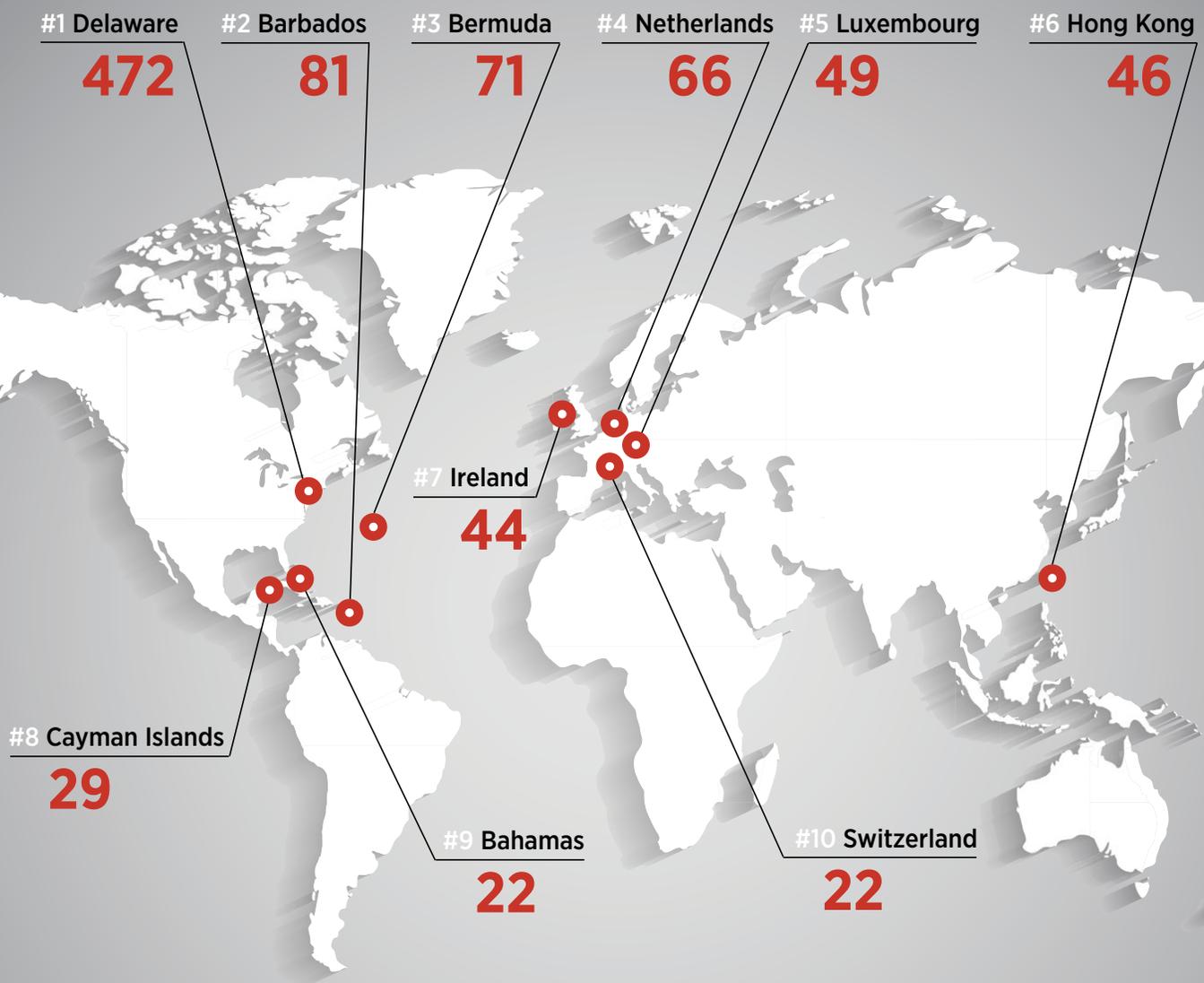
Delaware is by far the most popular location for the top 60 companies, with 472 listed and inferred subsidiaries. In 2016, Sun Life Financial alone had 38 in that state, Valeant Pharmaceuticals International Inc. had 68, the Potash Corporation of Saskatchewan had 33, Canadian National Railways had four, and Great West Life had five.

Tip of the iceberg

The numbers in the data set we pulled are surprisingly high, but the real number of corporate subsidiaries and related companies are orders of magnitude higher. As discussed above, there are notable limitations to the available public data and triangulation of our corporate data with data in the leaked files (Offshore Leaks Database) verifies that it is an underestimate.

FIGURE 1: NUMBER OF TSE TOP 60 COMPANY SUBSIDIARIES IN THE TOP 10 TAX HAVENS

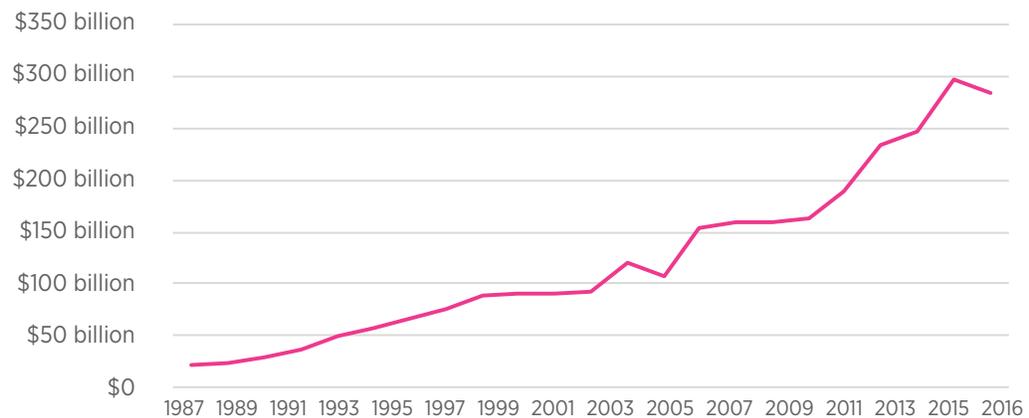
DELAWARE is by far the most popular location for the top 60 TSE companies with subsidiaries in known tax havens, with **472** listed subsidiaries. In 2016, **Sun Life Financial alone had 37** subsidiaries in that state. Canadian National Railways had **4**. Great West Life had **5**.



Canadian investment in tax havens has risen dramatically

Corporate money leaving Canada for offshore tax havens increased in a dramatic fashion between the early 1990s and 2016 (see Figure 2). As of 2016 Canadian assets in the 10 most popular Canadian tax havens reached over \$284 billion. This accounted for over a quarter of all Canadian foreign direct investment. This compares to \$21 billion in Canadian direct investment in those same jurisdictions in 1994. As discussed in the limitations, this is likely an underestimation.

FIGURE 2: CANADIAN FOREIGN DIRECT INVESTMENT (FDI) IN THE TOP 10 TAX HAVENS



Source: Statistics Canada. Table 376-0051 - International investment position, Canadian direct investment abroad and foreign direct investment in Canada, by country, annual (dollars).

Figure 3 on the following page shows the top 10 countries by the amount of FDI. Barbados, Luxembourg and Cayman Islands feature in the top three.

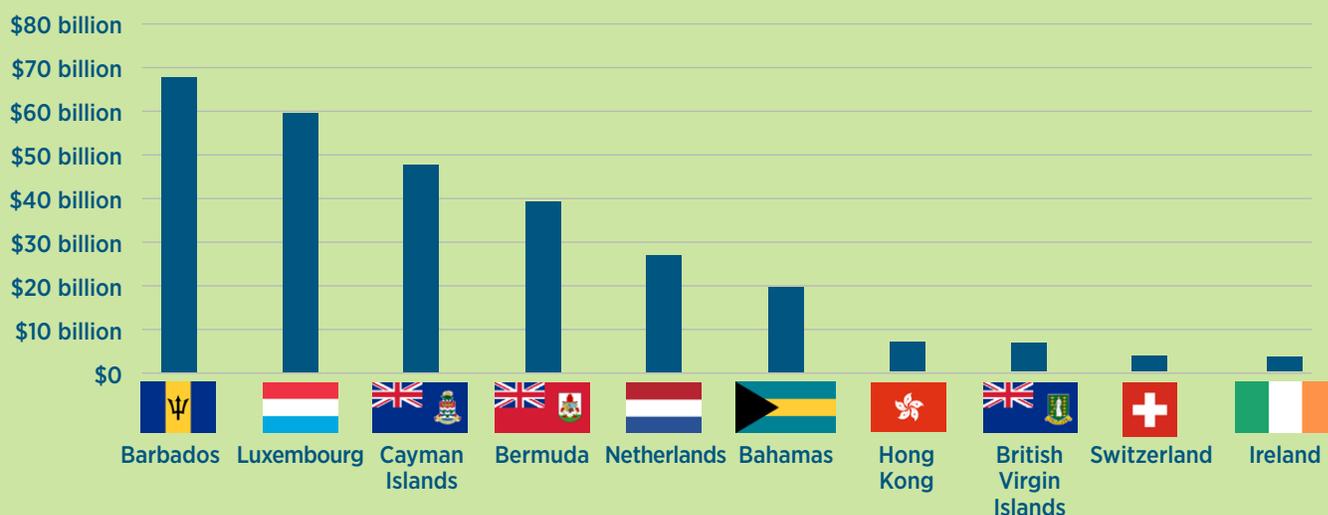
Is foreign direct investment (FDI) trending down?

The image above shows that in 2016, it started to tip slightly down. This reversal could be attributed to a number of different factors: the change in the value of the dollar could account for a significant portion of the change, as could reforms in Ireland that make it harder to exploit that country to avoid taxes. However, there were investment reductions in Luxembourg and Bermuda pointing to a wider trend. Certainly the high profile leaks may be putting a chill on the level of aggressive tax planning.

According to Allan Lanthier, a retired senior partner at Ernst & Young and former chair of the Canadian Tax Foundation, making assumptions about a trend here should be done with caution, "...there's been no substantive Canadian legislative change to address corporate tax base erosion that would account for a change in behaviour of Canadian multinationals."¹³

¹³ As quoted by Marco Chown Oved, "Canadian businesses pull money out of tax havens," *Toronto Star*, April 2017. thestar.com/news/world/2017/04/27/canadian-businesses-pull-money-out-of-tax-havens.html

FIGURE 3: CANADIAN FOREIGN DIRECT INVESTMENT (FDI) BY COUNTRY, 2016



Source: Statistics Canada Cansim Table 376-0051

Real or brass plate businesses?

As discussed earlier, companies often argue that their investments are substantive businesses and not brass plate subsidiaries. Although this will be true of some of the business investment, it is likely not the case for the bulk of the Canadian investment in the above listed tax havens.

Although it is outside the scope of this study to identify how much of that investment is tied to real business activity, employment levels can offer a rough proxy (see Section 2 for limitations). An analysis of the number of employees per \$1 billion in assets for selected tax havens and non-tax haven countries illustrates the disconnect between investment and employment for the tax havens (see Figure 4). The non-tax haven countries range from 1,240 to 2,760 employees per \$1 billion while the tax havens range from one employee to 250. Bermuda is the worst case. In 2014, Canadian corporations held almost \$31 billion in assets in that country while those subsidiaries employed a total of 35 employees.

The extent to which legal firms and banks are acting as facilitators for the use of known tax havens is evident in the data from the high profile leaks. The Panama and Paradise leaks show the sweeping role of some law firms while the Bahamas leak showed how deeply the banks are involved. The Toronto Star reported that the data from the Bahamas leak on corporate registrations, made available by the International Consortium of Journalists, included 2,000 corporations from three of Canada's banks alone.¹⁴ According to those accounts, RBC

¹⁴ Robert Cribb and Marco Chown Oved, "1 tax haven, 3 of Canada's biggest banks, 2,000 offshore companies," Toronto Star, Sept. 21, 2016, thestar.com/news/world/2016/09/21/1-tax-haven-3-of-canadas-biggest-banks-2000-offshore-companies.html

FIGURE 4: EMPLOYEES PER \$1 BILLION IN ASSETS (2014)



An analysis of the number of employees per \$1 billion in assets for selected tax havens and non-tax haven countries illustrates the disconnect between investment and employment for the tax haven countries

Note: Employment data is available only for 2014, so FDI from 2014 was used and will not match the 2016 figures used elsewhere in this report. Source: Statistics Canada Cansim Table 376-0065.

Bermuda shows the worst disconnect between investment and employment.

In 2014, Canadian corporations held almost \$31 billion in assets in that country while those subsidiaries employed a total of 35 employees.



registered 847 companies in the Bahamas between 1990 and May 2016. RBC's 2016 annual report on principal subsidiaries identifies one subsidiary in the Bahamas.¹⁵ Similarly, the Toronto Star found 632 companies registered by CIBC in the Bahamas while the public data shows two (one reported and one inferred). This is, of course, only a glimpse through a few law firms, and a few known tax havens; it is the tip of the iceberg.

How much are they paying in taxes?

There is little available public data on taxes paid in Canada by Canada's publicly listed companies. U.S. research on the top Fortune 500 found that effective tax rates were in the negative for almost 30 of 280 profitable companies examined and that those rates stayed in the negative from 2008 to 2010.¹⁶ Studies of the effective tax rate in Canada vary greatly and use widely different methodologies. Academics at Duke University, MIT, and University of North Carolina established a clear method of an over time average based on the cash effective rate.¹⁷ Canadian studies, including the Best 50 rankings by Corporate Knights, using this method found the Canadian effective rates to be well below the statutory rate.¹⁸ In 2014, *Canadian Business* published an investigative report examining taxes paid over a 10-year period for the top 15 TSX companies.¹⁹ It found that, on average, the effective tax rate ranged from a low of 1.8 per cent to a high of 15 per cent compared to an actual tax rate of 26.5 per cent.

Table 2 on the following page shows the *Canadian Business* data on the effective tax rate paid for a selection of the companies examined in this study compared to the statutory rate.

This creates the situation where all of the large Canadian corporations listed above are paying lower tax rates than an Ontario citizen earning \$42,000 in income.²⁰

15 Royal Bank of Canada, "Annual Report 2016, Principal Subsidiaries, annualreports.rbc.com/ar2016/pdfs/principal_subsidaries_ENG.pdf

16 Citizens for Tax Justice, "Big No-Tax Corps Just Keep on Dodging," April 9, 2012, ctj.org/ctjreports/2012/04/big_no-tax_corps_just_keep_on_dodging.php#Warx7oqQxsZ

17 Corporate Knights 2016 Best 50 (corporateknights.com) and Scott Dyreng, Michelle Hanlon, and Edward L. Maydew, "Long-Run Corporate Tax Avoidance," *Accounting Review* 83:1, 2007, <https://ssrn.com/abstract=1017610>. For a good discussion of methodologies, see Joe Castaldo, Mark Brown and Matthew McClearn, "How we ranked the Canadian companies paying unusually low taxes," *Canadian Business*, Feb. 26, 2014, Part of the series "How to Pay No Taxes, An Investigative Report."

18 Dyreng et al, supra note 7.

19 Joe Castaldo, Mark Brown and Matthew McClearn, "Which large companies paid the least tax?" *Canadian Business*, Feb. 27, 2014.

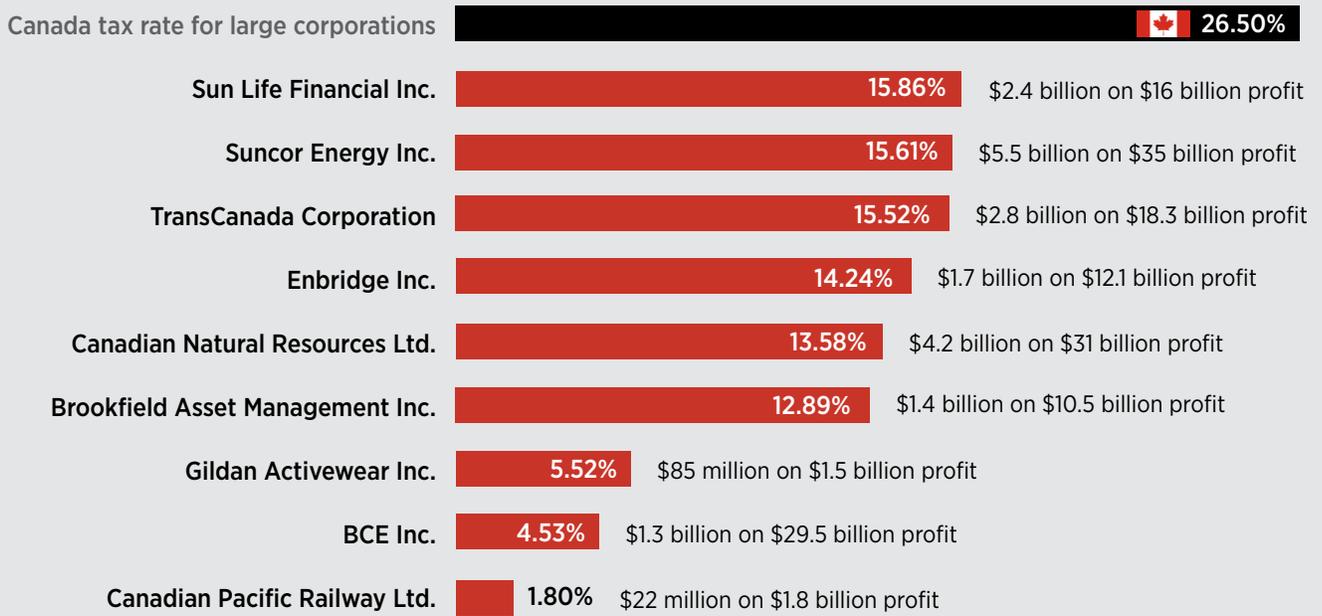
20 Government of Canada, "Canadian Income Tax Rates Individuals," canada.ca/en/revenue-agency/services/tax/individuals/frequently-asked-questions-individuals/canadian-income-tax-rates-individuals-current-previous-years.html



The Toronto Star found 632 companies registered by CIBC in the Bahamas while the public data shows two (one reported and one inferred). This is, of course, only a glimpse through a few law firms, and a few known tax havens; it is the tip of the iceberg.

Photo: Neal Jennings/Flickr

FIGURE 5: Effective tax rates of select TSX companies, over a 10 year period



Source: Adapted from Castaldo et al. 2014, selecting TSX top 60 companies that appeared in our study of tax havens.

This creates the situation where all of the large Canadian corporations listed above are paying lower tax rates than an Ontario citizen earning \$42,000 in income.





What is wrong with doing business in tax havens?

THE WEALTHY AND LARGER CORPORATIONS disproportionately benefit from our social and physical infrastructure, and have the greatest access to tax loopholes and tax havens. Median and lower income Canadians and owners of small businesses are least able to access tax loopholes and tax havens. This results in an unfair tax system.

This is true internationally as well, tax havens particularly disadvantage poor countries. Research by the United Nations University found that the poorer a country is, the more likely it is that corporations and individuals will shift their profits out of the country in response to incentives (e.g., lower rates) offered by other countries.²¹

There are many costs of tax havens. The OECD list of negative benefits to includes:²²

- Distorting financial and, indirectly, real investment flows;
- Undermining integrity and fairness of tax structures;
- Discouraging compliance by all taxpayers;
- Reshaping the mixes of taxes and public spending;
- Causing undesired shifts of part of the tax burden to less mobile tax bases, such as labour, property and consumption; and
- Increasing administrative costs and compliance burdens on tax authorities and taxpayers.

²¹ N. Johannesen, T. Tørsløv and L. Wier, "Are less developed countries more exposed to multinational tax avoidance? Method and evidence from micro-data," 2016/10, Helsinki: UNU-WIDER as referenced in Oxfam "Tax Battles," Policy Paper December 2016.

²² OECD, *Harmful Tax Competition: An Emerging Global Issue*, 1998.

From a gender perspective, according to the Association for Women's Rights in Development (AWID), tax havens hinder a state's ability to mobilize the maximum available resources for the realization of human rights, including long agreed commitments on women's rights and gender equality.²³ Other AWID concerns include:

- Underfunding social services causing an increased unpaid care burden for women;
- Lack of public sector investment and lower public sector employment meaning greater unemployment in sectors where women dominate;
- Causing tax shifts to more regressive fiscal policies causing women pay higher proportions of their already relatively-lower incomes on taxes; and
- Increased reliance on debt by developing countries, meaning less autonomy and control by government, less ability to negotiate or avoid conditionalities that often impact disproportionately on women and undermine gender equity.

The government does not have adequate resources to deal with the major economic, social and environmental challenges we face. The problems of growing inequality, deteriorating social and physical infrastructure and climate change require government action. Individuals, on their own, can do very little to address these challenges.

The lower tax rates and policy competition with tax havens have meant that individual taxpayers are picking up the slack. Personal income tax revenue has grown as a share of federal government's total revenue from 30 per cent in the 1970s to almost 50 per cent in 2013. The share of corporate income tax dropped over the same period from 20 to 13.6 per cent.²⁴

The wealthy and large corporations not only rely on publicly funded social and physical infrastructure to access markets, but on the education system for their own and their workers' skills, the health system for keeping those workers healthy, government subsidies to research and development that have built the backdrop to their success, and a myriad of other publicly funded benefits. Yet they pay a lower share of their income than middle income Canadians and many pay a lower rate than small businesses — due in part to tax havens. This is obviously the opposite of goals that democratic societies have established through statutory tax rates.

Arguments have been made that cutting corporate taxes is a response to tax havens and competition with low tax jurisdictions. There is no evidence that this is an effective strategy, in fact, the opposite. Despite over a decade of cuts to corporate tax rates in Canada, tax reductions are neither mirrored by reductions in money sent to tax havens nor by reductions in the number of Canadian subsidiaries or shell companies in those

²³ Association for Women's Rights in Development AWID, "Seven feminist policy recommendations to curb illicit financial flows," July 2017.

²⁴ Daniel Tencer, "Canada's Tax Burden Shifting From Corporations Onto People: Economist," Huffington Post Canada, November 24, 2013, huffingtonpost.ca/2013/11/24/corporate-personal-taxes-canada_n_4333694.html



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tax havens: FDI in known tax havens went up dramatically. Researchers from the Economics & Strategy Group at the University of Birmingham have found evidence that the home country corporate tax rate has a minimal impact on the likelihood of a multinational corporation to use a tax haven.²⁵ Although not part of the solution to tax havens, low tax rates are part of the problem.

Tackling inequality requires more tax fairness. Distributing the cost and benefits of taxes fairly means moving away from taxing labour and consumption and toward taxing wealth, capital, and income; increasing transparency on tax incentives; and introducing national wealth taxes. None of these measures can be effective without tackling tax havens.

Tax havens are harmful for our economy and our well-being. The International Monetary Fund, OECD, and many other mainstream organizations have been ringing alarm bells that inequality is dragging down our economic growth and doing harm to our economy. There is also no question that inequality is harmful to overall human well-being across the full range of social determinants of health.

With the increasing gap between rich and poor, incomes for most Canadians have been stagnating as have demand and productivity. There is a pressing need to invest here at home to address Canada's competitiveness, but the government needs the revenues. Not only do tax havens reduce funds available nationally to tackle these issues, but the capital mobility created by tax havens makes it harder for government to close gaps in tax fairness at home.

Distributing the cost and benefits of taxes fairly means moving away from taxing labour and consumption and toward taxing wealth, capital, and income.

²⁵ Chris Jones and Yama Temouri, "The determinants of tax haven FDI," *Journal of World Business*, Vol. 51, Issue 2, February 2016, pp. 237-250, sciencedirect.com/science/article/pii/S1090951615000772#!



Canada's cozy relationship with tax havens

CORPORATE CANADA'S USE OF TAX HAVENS has a long history. Since the early 1990s a series of tax treaties with tax havens and budget cuts at the Canada Revenue Agency were instrumental in the dramatic growth documented in this report. Canada is not only tolerating tax haven use to avoid taxes but has been facilitating it. Additionally, Canada's lack of transparency on corporate ownership has allowed Canada to become a tax haven destination itself.

Treaties

Much of the tax haven use in Canada has its roots in a series of taxation treaties starting in 1980 with the Barbados. According to that treaty, Canadian companies can transfer revenues to the Barbados and, once the company has paid the incredibly low taxes in the Barbados (at 0.25 to 2.5 per cent), any profits earned at a subsidiary based or linked to there can be brought back to Canada tax-free. Obviously, this creates an incentive to re-allocate profits to the Barbados-based subsidiary, to avoid paying taxes in Canada, and companies are actively doing so.

The Barbados treaty is only one of many such treaties that have been negotiated in the last few decades, many of which enable no taxation. The Bahamas, for example, has no income tax, corporate tax, value-added tax or wealth tax for those who create offshore companies. This enables companies to use the treaty framework to move funds offshore through the Bahamas and back again tax-free. Canadian money in the Bahamas has grown to an all-time high — nearly \$20 billion.



Photo courtesy Bryony Andrew/Flickr

Much of the tax haven use in Canada has its roots in a series of taxation treaties starting in 1980 with the Barbados. According to that treaty, Canadian companies can transfer revenues to the Barbados and, once the company has paid the incredibly low taxes in the Barbados (at 0.25 to 2.5%), any profits earned at a subsidiary based or linked to there can be brought back to Canada tax-free. Obviously, this creates an incentive to re-allocate profits to the Barbados-based subsidiary, to avoid paying taxes in Canada, and companies are actively doing so.

Gildan is an excellent case study of the impact of the Barbados treaty. Gildan was originally a Montreal based company. In the late 1990s citing pressure to compete with cheap imports, the company moved its business headquarters to Barbados and its manufacturing to Honduras.²⁶ Gildan now appears to have eight subsidiaries in the Barbados and four in Delaware. The average annual Canadian tax payment from Gildan was 5.52 per cent (see Figure 4 on page 20). Gildan is not alone — as shown earlier, Barbados is Canada’s top tax haven destination.

The Organization for Economic Co-operation and Development (OECD) has been developing and advocating for Tax Information Exchange Agreements (TIEAs) to address harmful tax practices through international standards on transparency and the exchange of information. The OECD intends the TIEAs to help make

²⁶ See *Toronto Star* expose, which includes quotes from an interview with Gildan VP Peter Iliopoulos, by Marco Chown Oved, “Canadian companies use tax treaties and TIEAs to avoid tax,” June 17, 2016, thestar.com/news/world/2016/06/17/canadian-companies-use-tax-treaties-and-tieas-to-avoid-tax.html

offshore havens more transparent with agreements by the signatory countries to hand over secret banking and other financial details.²⁷

However, in a move that undermined the TIEAs, the Conservative government amended the tax rules to make every country Canada has a TIEA with into a new Barbados, effectively greatly expanding the leeway for companies to use tax havens. Canada is setting records with 93 tax treaties and 23 tax information exchange agreements (TIEAs), which allow corporations to claim profits in tax havens — where there is little or no tax — then move the money into Canada tax free.²⁸

The impact of these treaties on government revenues has been immediate and clear as shown earlier in this report with the dramatic rise in FDI being channelled into tax havens.

Reduced powers at the CRA

The Conservative government introduced major cuts to the CRA, laying off whole units. This transformation caused deep and lasting damage to the agency.

In the initial years that tax haven use was rising, the Canada Revenue Agency's capacity for ensuring compliance by corporate Canada was significantly diminished. The Conservative government introduced major cuts to the CRA, laying off whole units. They suffered more staff cuts than any other government department.²⁹ This transformation caused deep and lasting damage to the government agency tasked with collecting the money that funds our health care, education, safety and more.

The CRA's record on big tax evasion cases has been abysmal. It is not surprising given that CRA auditors and managers reported in 2015 that the cuts, interference and lobbying had compromised the agency's limited capacity to keep up with a tax avoidance industry that creates ever bolder schemes.³⁰

The obvious public distaste for the anti-tax antics of Canadian multinationals and the super-wealthy is filtering into the rhetoric of the Liberal government and the CRA with increasing reference to tax fairness, tax havens, tax avoidance and tax evasion. In 2017 the federal government announced increased funding for the CRA with a bump of \$444 million over five years. The CRA also announced that the number of examinations focused on "high-risk" wealthy individual taxpayers was being boosted from 600 to 3,000. The announcement also included hiring 100 new auditors, increasing the staff by 10 per cent, ostensibly to investigate high-risk multinational corporations. The CRA has been collecting information on all international electronic funds transfers over \$10,000, including those involving Panama and other jurisdictions of concern and is conducting

27 For more, see the OECD website on Tax Information Exchange Agreements (TIEAs), oecd.org/tax/exchange-of-tax-information/taxinformationexchangeagreementstieas.htm

28 Zach Dubinsky, "Deals Canada signed to catch tax cheats allow billions in taxes to escape," CBC/Toronto Star, June 17, 2016, cbc.ca/news/business/canada-offshore-tax-avoidance-corporations-tiea-1.3639597

29 Canadians for Tax Fairness, "What is Wrong with the CRA? and How to Fix it," December 2015, taxfairness.ca/sites/taxfairness.ca/files/pdf/what_is_wrong_at_cra.pdf

30 Ibid.



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related audits. The government has also launched the Offshore Tax Informant Program that offers a reward for information on major tax cheats using tax havens and the establishment of a special unit in the Canada Revenue Agency to work on international tax evasion and aggressive tax avoidance. To date, however, this list of changes has led to few prosecutions.

The CRA can only be as effective as the legal framework it operates in and with Canada's TIEAs and other lax laws, that legal framework effectively makes them do their job with one hand tied behind their back. The law needs to be changed to curb tax havens not facilitate them so the CRA can then do their job.

Canada as a tax haven

This report has focussed so far on the use of tax havens by Canadian businesses. However, Canada's federal, territorial and provincial laws have also made Canada a destination of its own for foreign funds. Those levels of government have all failed to implement transparency around beneficial ownership, leaving the complex web of anonymous companies and trusts shrouded by a veil of secrecy. This is one of the key reasons why Canada was marketed by Mossack Fonseca, the law firm at the center of the Panama Papers, as a good place to incorporate an anonymous shell company. Additionally, federal government risk assessments have identified Canadian corporations and trusts as highly vulnerable to money laundering and terrorist financing.



Policy context and trends

INTERNATIONAL DIALOGUE AND ACTION on international financial flows and tax havens has been mounting, including a series of international treaties. Whether these trends in policy will have any significant long-term impacts on tax haven usage remains to be seen.

Action to increase transparency is being discussed in multiple international forums. In July 2017, the G20 renewed support for Financial Action Task Force (FATF) International Anti-money Laundering and Combating the Financing of Terrorism and Proliferation (AML/CFT) standards, including beneficial ownership, and a further progress report is expected in early 2018.³¹

The OECD published its action plan on Base Erosion Profit Shifting (BEPS) in 2013. G20 leaders and finance ministers endorsed this plan. Engagement in the BEPS project has since been extended to other large non-OECD states and representatives of developing countries. In October 2015 the BEPS project published a report and further recommendations on the BEPS 15 actions items.³² There have been international policy changes as a result in a number of areas. Significant action on BEPS includes the implementation of country-by-country reporting through the Inclusive Framework. 'Country-by-country' reporting refers to the annual reports by multinational enterprises (MNEs) for each tax jurisdiction in which they do business. Also, 77 countries have signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS, which allows countries to bring BEPS measures into their existing bilateral tax treaties.

31 The Financial Action Task Force (FATF) is an inter-governmental body initially established by a G7 summit in 1989 to address issues of transparency related to terrorism funding and illegal financial flows. Canada is a member. See fatf-gafi.org/about/

32 For detail on the BEPS 15 actions, see oecd.org/ctp/beps-actions.htm

These international efforts, combined with recent in-country public pressure, have led to country-level policy change in some tax haven jurisdictions as well as in non-tax haven countries. Ireland has begun the process of tightening up its tax laws, adopting actions needed to comply with BEPS and the EU Anti-Tax Avoidance Directives (ATAD). After the 'Lux-Leaks' scandal, Luxembourg moved to reform its tax laws, reducing banking secrecy and getting themselves off of the OECD blacklist.

Increasing numbers of countries are also implementing beneficial ownership registries. Canada has not. The United Kingdom, Ukraine, Denmark and Bulgaria have made their beneficial ownership registries public, while several other countries including Ghana, Nigeria and India have committed to doing so in the future.

In Canada, the federal Budget 2017 notes that the government has implemented — or is in the process of implementing — the measures agreed to by OECD members as the minimum standards under the BEPS project, including:³³

- Enacting legislation in December 2016 that requires large multinational enterprises to file country-by-country reports;
- Participating in the development of a multilateral instrument to streamline the implementation of tax treaty-related BEPS recommendations;
- Ensuring that revenue authorities are not granting taxpayers non-transparent “private” tax rulings that grant favourable tax treatments by having the CRA begin the spontaneous exchange of tax rulings that may give rise to BEPS issues with other tax administrations worldwide; and
- Budget 2017 further notes that the CRA is applying the OECD’s revised transfer pricing guidance in determining whether multinational enterprises are pricing their intercompany transactions in accordance with the arm’s length principle.

Canada also has implemented the OECD Common Reporting Standards effective July 2017, creating automatic sharing of information on accounts by non-resident account-holders.

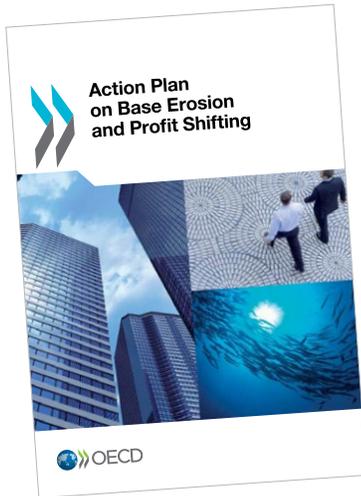


Federal Budget 2017 notes that the government has implemented — or is in the process of implementing — the measures agreed to by OECD members as the minimum standards under the BEPS project.

³³ Government of Canada, “Federal Budget Briefing,” May 2017, osler.com/en/resources/regulations/2017/federal-budget-briefing-2017#section2

Problems with Base Erosion Profit Shifting (BEPS)

Although Base Erosion Profit Sharing (BEPS) Project is an important effort by the OECD and will likely have an effect on international tax evasion, it has some major flaws and has come under significant criticism. A conspicuous gap is that it only applies to treaties where both countries are signatories of BEPS.



The goal of BEPS was to ensure that multinational enterprises (MNEs) were taxed ‘where economic activities take place and value is created.’ This would require treating a corporate group as a single firm and attributing the tax base to the real activities in each country.

Another particularly important gap is that it continues to treat subsidiaries as independent entities trading with one another at ‘arms length.’ The goal of BEPS was to ensure that multinational enterprises (MNEs) were taxed ‘where economic activities take place and value is created.’ This would require treating a corporate group as a single firm and attributing the tax base to the real activities in each country. John Christensen, the former Director of the Tax Justice Network argues that unless this is done, the BEPS outcomes will merely introduce yet more complexity.³⁴

Other challenges with BEPS include that the country-by-country reporting is not public, and that the reporting thresholds are often set too high.

Taxing business where the economic activity takes place, while very important, can be challenging to implement. The Google case is a good example. Google argued that it was not liable to pay tax on the money it makes from UK advertisers because, while the bulk of its marketing staff are based in London, those negotiating and closing the deals are based in Dublin.³⁵

The EU is considering a range of anti-tax avoidance proposals that go further than BEPS.³⁶ These include capping intra-company interest deductions at 30 per cent, and addressing the double no-tax issue by allowing a country to tax profits of a foreign-based subsidiary if its tax rate is lower than 40 per cent of the home-country rate.

International NGOs like Oxfam have noted that this package of reforms still allows for significant revenue losses to tax havens, terming it the ‘lowest common denominator.’³⁷

34 As quoted in Tax Justice Network press release: Nick Shaxson, Press release: OECD’s BEPS proposals will not be the end of tax avoidance by multinationals, October 5, 2015.

35 Patrick Wintour, Juliette Garside and Ben Quinn, “George Osborne claims progress in tax haven plan,” *The Guardian*, May 2, 2013.

36 European Commission, Taxes and Customs Union, “Anti-Tax Avoidance Package,” January 2016, ec.europa.eu/taxation_customs/taxation/company_tax/anti_tax_avoidance/index_en.htm

37 Bernard Simon, “Taxing business,” *Corporate Knights*, March 29, 2016, corporateknights.com/channels/leadership/12331-14592312/

The new federal government has been reversing some of the actions of the previous Conservative government, and ramping up the Canada Revenue Agency's capacity to tackle tax avoidance and evasion. This is already paying off in increased revenue collection.



More Action is needed in Canada

As discussed above, the new federal government has been reversing some of the actions of the previous Conservative government, and ramping up the Canada Revenue Agency's capacity to tackle tax avoidance and evasion. This is already paying off in increased revenue collection. Aside from funds earmarked for social spending, tackling tax havens is one of the most strategic uses of taxpayer money.

While some welcome initiatives have been taken to go after wealthy individuals who evade taxes using tax havens, little has been done to go after corporations avoiding taxes by shifting profits to tax havens, letting corporations effectively off the hook. The focus needs to shift to offshore and onshore corporate tax dodging. Analysis by the Canadians for Tax Fairness indicates that 65 per cent of tax haven use is by corporations.

The government capacity issues go well beyond those of the CRA. Enhanced enforcement efforts will produce limited results unless the lax corporate tax laws are reformed, tax treaties with tax havens are renegotiated and loopholes closed. Both Finance and Global Affairs ministries will need the resources to be actively involved in national and international law reform and enforcement related to tax havens. The Justice Department also needs to hire more lawyers to ensure there is the capacity to prosecute the larger tax violations.

More serious treatment of sophisticated tax cheating is needed in Canada, including both higher penalties and a greater probability of detection and prosecution. Canadians for Tax Fairness has registered concern with the Voluntary Disclosures program in Canada being too lenient and the need for reform.³⁸



In June, 2017 Victoria MP Murray Rankin introduced a private member's bill that would make a great step towards tackling tax havens. Bill C-362 would require companies to show 'economic substance' for offshore subsidiaries to be treated as separate legal entities for tax purposes.

³⁸ Canadians for Tax Fairness, "Proposed changes to Canada Revenue Agency Voluntary Disclosures Plan Welcome, July 2017, taxfairness.ca/en/news/proposed-changes-canada-revenue-agency%E2%80%99s-voluntary-disclosures-program-are-welcome



Conclusions and recommendations

INEQUALITY IS A DRAG ON ECONOMIC GROWTH and harmful to overall human well-being. With the increasing gap between rich and poor and a pressing need to invest here at home to increase Canada's global competitiveness, it is vital that government get the message, and act.

In 2016, there was at least \$284 billion in Canadian corporate money sitting in the top 10 tax havens. Canadians for Tax Fairness estimates that the Canadian treasury loses between \$10 billion and \$15 billion each year from the corporate use of tax havens:

- Enough to fund a Pharmacare program;
- Enough to fund universal childcare;
- Enough to make university tuition free; or
- Enough to improve infrastructure in First Nations communities.

All of these measures would stimulate economic growth, and, particularly free tuition and universal childcare, unlock significant, much needed economic potential in Canada. These are among the priorities Canadians say they want so that Canada can be a healthy, prosperous place.

Tax watchdogs, whistleblowers, and journalists have pushed back. The Paradise Papers, Panama Papers, and Bahamas and Luxembourg Leaks have exposed the extent of tax dodging among the wealthy and corporations. It also showed the willingness of legal and financial institutions to profit from that attitude of entitlement — corporate or otherwise.

Tax havens make the rich richer and the poor poorer and diminish the resources available to run our economy and society. The lower tax rates and policy competition with tax havens have meant that individual taxpayers are picking up the slack; personal incomes is making up and increasing share of taxes the corporate share has been falling.

The government does not have adequate resources to deal with the major economic, social and environmental challenges we face. The problems of growing inequality, deteriorating social and physical infrastructure and climate change require government action. Individuals, on their own, can do very little to address these challenges.

Canadian taxpayers deserve more corporate and government accountability. Given that the G7 and OECD initially raised the negative consequences of harmful tax competition in the 1990s, relatively little progress has been made. Although recent personal attacks and public scandals have been having some effect on reducing the popularity of known tax havens, success will be limited without significantly increased enforcement of existing laws, tax reform that sets clear boundaries around tax payment, and pressure by non haven jurisdictions on the tax havens to meet international standards and tax thresholds.

The crux of the problem is the unreasonable ability of companies to geographically separate their activity, revenue, and profits. Some of the mechanisms that enable this include patent boxes – using international preferential treatment to locate intellectual property where there are low to no taxes on international property, as well as preferential treatment of interest rates. Canada’s international tax treaties that effectively allow double tax avoidance are also a stumbling block.

The digital economy will only make these murky waters even worse with product and service networks that often fall outside the tax regimes of specific countries, enabling significant profits to go untaxed.

Governments need to act together and much more aggressively to stop the race to the bottom.

Tax havens make the rich richer and the poor poorer and diminish the resources available to run our economy and society.

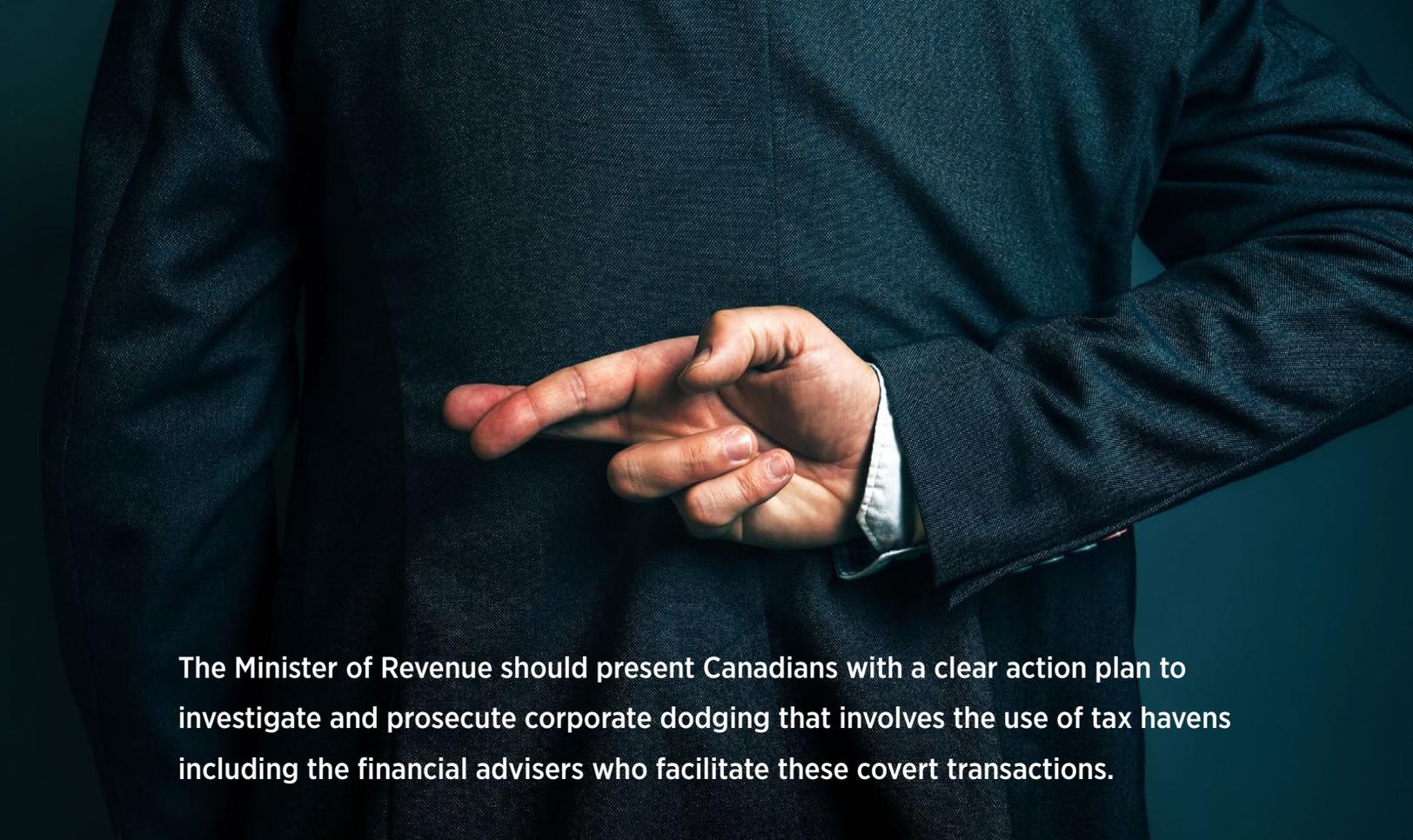


Recommendations



A critical defense against illegal activities is transparency. Transparency can help increase public scrutiny of aggressive tax avoidance and increase public pressure on large companies actively avoiding paying their fair share.

- 1. YOU CAN'T FIX WHAT YOU HAVEN'T MEASURED.** The Government of Canada has shied away from a frank look at what Canada's treasury is losing by allowing corporations to set up offshore structures to reduce taxes in Canada. The Parliamentary Budget Office has been denied access to the data needed to calculate that tax gap. The Canada Revenue Agency should immediately begin the work to assess this aspect of the tax gap and report fully to Canadians. There needs to be clear, transparent, public data on foreign financial flows, profits from Canadian operations, and effective tax rates (treating cash payments separately from deferred taxes).
- 2. UPDATE YOUR TREATIES.** Canada should immediately commit to renegotiating the bilateral agreements and Tax Information Exchange Agreements (TIEAs) that facilitate tax haven use to avoid taxes. Those deals do not reflect the principles set down by the OECD and G20 to fight base erosion and profit shifting. Those TIEAs need to be brought up to current standards and multilateral objectives, and clear requirements are needed for companies to pay taxes where the activity takes place, and to prevent the abuse of transfer pricing and interest charges.
- 3. REDIRECT NEW RESOURCES.** The current government has earmarked \$444 million over five years for CRA programs to fight tax dodging. So far the bulk of that appears to be going toward investigating wealthy individuals. It is estimated that more than 65 per cent of losses to tax havens are from corporate tax dodging. The Minister of Revenue should present Canadians with a clear action plan to investigate and prosecute corporate tax dodging that involves the use of tax havens including the financial advisers who facilitate these covert transactions.
- 4. UPDATE YOUR LAWS.** Government auditors, investigators and lawyers need stronger laws to crack down on corporations who are gaming the tax system. Parliamentarians should enact legislation that clearly requires corporations to prove "economic substance" when accessing tax breaks for subsidiaries in tax havens as proposed in Victoria MP, Murray Rankin's Private Member's Bill C-362. A strong legal framework is needed to prevent and monitor transfer mis-pricing and cap interest payments to offshore subsidiaries. The law needs to hold facilitators of tax haven abuse and their firms accountable with stronger penalties. The government should also apply a 1 per cent withholding tax on Canadian assets held in tax havens.
- 5. SHINE A LIGHT.** A critical defense against illegal activities is transparency. Transparency can help increase public scrutiny of aggressive tax avoidance and increase public pressure on large companies actively avoiding paying their fair



The Minister of Revenue should present Canadians with a clear action plan to investigate and prosecute corporate dodging that involves the use of tax havens including the financial advisers who facilitate these covert transactions.

share. Canada and the provinces need to establish public corporate registries of beneficial owners. There need to be clear requirements for full transparency of relationships between subsidiaries and parent companies.

- 6. JOIN FORCES.** Canada needs to be an active participant in and supporter of much stronger international efforts to address base erosion and profit shifting. This means taking a leadership role on these issues through the UN, G7, G20, and OECD.
- 7. DO THE RIGHT THING: CORPORATIONS AS LEADERS.** Corporations aren't responsible to just their shareholders. Corporate social responsibility should include paying a fair share of taxes to a country that provides for the health and education of a workforce, infrastructure and rule of law, and invests in research and innovation. Canadian corporate social responsibility networks should take the lead in setting standards for acceptable minimum effective tax rates.
- 8. DO THE RIGHT THING: TAX PROFESSIONALS AS LEADERS.** Some tax professionals and legal advisors create corporate tax avoidance structures that break the spirit and the intent of the law. Professionals associations can provide leadership by taking a public position against the abuse of tax havens by Canadian corporations.

Canada needs to be an active participant in and supporter of much stronger international efforts to address base erosion and profit shifting. This means taking a leadership role on these issues through the UN, G7, G20, and OECD.

Corporate research sources and limitations

SEDAR

The primary source of information is the Annual Information Form (AIF) that TSX companies are required to disclose through the System for Electronic Document Analysis and Retrieval (SEDAR).³⁹ The AIF has a section entitled “Inter-Corporate Relationships” where companies are required to list subsidiaries. In some cases companies provide detailed organizational charts while others provide only non-hierarchical lists.

Unfortunately, the list of subsidiaries provided in the AIF is not complete. Canadian securities regulations allow companies to omit subsidiaries that do not meet designated materiality thresholds. Specifically, subsidiaries need not be disclosed if they do not exceed 10 per cent of the company’s consolidated asset or consolidated revenue.⁴⁰ Research in the United States suggests that similar materiality thresholds allow companies to avoid disclosing 85 per cent of their subsidiaries.⁴¹

EDGAR

A secondary source of subsidiary information for TSX companies cross-listed in the United States are their US corporate filings held on EDGAR.⁴² One section of the annual 10K reports (Exhibit 21) lists significant subsidiaries, though the materiality threshold mean that many subsidiaries are not included.

³⁹ The System for Electronic Document Analysis and Retrieval is the repository for electronic filing of securities information as required by Canadian Securities Administrator.

⁴⁰ See Form 51-102F2 AIF, 2015. Note, the threshold of 10 per cent is high, compared to what accountants generally consider to be materiality. For comparison, the U.S. and OECD thresholds for beneficial ownership disclosure are 5 per cent.

⁴¹ See, Lax SEC Reporting Requirements Allow Companies to Omit over 85 per cent of Their Tax Haven Subsidiaries, Citizens for Tax Justice, 2016, p. 1. For general accounting standards of materiality see [https://en.wikipedia.org/wiki/Materiality_\(auditing\)](https://en.wikipedia.org/wiki/Materiality_(auditing)).

⁴² EDGAR: (Electronic Data Gathering, Analysis, and Retrieval) is an online public database from the U.S. Securities and Exchange Commission (SEC).

Corporate registries

Subsidiary information was also drawn from publicly accessible company registry databases. The principal source is OpenCorporates. This method of searching avoids materiality thresholds, but has two significant limitations that result in underestimates. First, as company registries do not identify ownership structures, the association is inferred based on the name (e.g., the Bank of Nova Scotia (Panama) S.A. registered in Panama is presumed to be a subsidiary of Bank of Nova Scotia registered in Canada). This tends to result in underestimates, as companies often use unrelated names and numbered (unnamed) companies. This would tend to encourage companies seeking secrecy to use unrelated names and numbered companies. Subsidiaries that are identified in public company registries through name association are specifically labeled “inferred” in the project data for this report.

Further underestimation arises because some company registries are not publicly accessible: those of Bahamas, Barbados, Bermuda, Cyprus, Delaware, Mauritius, Netherlands are accessible, but those of the British Virgin Islands, the Cayman Islands, Guernsey and Jersey are not. This would tend to encourage companies seeking secrecy to be drawn disproportionately to the latter group of countries.

APPENDIX 2

TSE CORPORATIONS BY MARKET CAPITALIZATION AND NUMBER OF REPORTED SUBSIDIARIES AND RELATED COMPANIES

TSE corporations	Market capitalization	Listed subsidiaries	Inferred related companies	Total
Valeant Pharmaceuticals International Inc.	11,917,801,175	171	6	177
General Motors Company	49,333,710,539	170		170
Sun Life Financial Inc.	25,690,406,446	59	15	74
Constellation Software Inc.	10,610,175,240	61	2	63
Endo International plc	8,672,108,952	36	20	56
Manulife Financial Corporation	36,441,497,825	18	32	50
Brookfield Infrastructure Partners	8,526,541,318	1	48	49
Barrick Gold Corporation	22,276,355,966	29	2	31
Potash Corporation of Saskatchewan Inc.	20,644,377,634	29		29
Goldcorp Inc.	18,230,472,276	7	17	24
Magna International Inc.	22,462,878,373	5	13	18
Saputo Inc.	15,702,494,440	2	15	17
Toronto-Dominion Bank (The)	102,526,048,213	13	2	15
Bank of Nova Scotia (The)	76,446,933,787	13	2	15
Bank of Montreal	50,566,799,249	10	4	14
Royal Bank of Canada	111,824,394,576	13	0	13
Canadian Imperial Bank of Commerce	38,949,079,671	12	1	13
Suncor Energy Inc.	56,169,275,940	3	9	12
Fairfax Financial Holdings Limited Sub.	16,247,924,573	12		12
Brookfield Asset Management Inc.	44,166,085,740	3	8	11
Thomson Reuters Corporation	38,883,057,407	11	0	11
Agrium Inc.	16,599,623,660	1	10	11
Power Corporation of Canada Sub.	12,522,149,978	10		10
Restaurant Brands International Ltd.	11,776,854,789	8	0	8
Restaurant Brands International Inc.	11,640,966,454	8	0	8
Great-West Lifeco Inc.	35,234,136,240	7		7
TELUS Corporation	24,349,413,056	7	0	7
Power Financial Corporation	23,472,684,958	7	0	7
Husky Energy Inc.	16,378,810,701	3	4	7
Enbridge Inc.	45,907,612,039	6		6

TSE corporations	Market capitalization	Listed subsidiaries	Inferred related companies	Total
National Bank of Canada	14,808,734,573	3	3	6
Fortis Inc.	10,998,506,004	1	4	5
Canadian National Railway Company	63,572,382,873	4	0	4
Franco-Nevada Corporation	15,159,413,662	4		4
Cenovus Energy Inc.	14,772,532,829	2	2	4
George Weston Limited	14,722,652,323	4		4
Agnico Eagle Mines Limited	10,936,809,995	4	0	4
Gildan Activewear Inc.	9,476,479,142	3	1	4
Silver Wheaton Corp.	9,386,521,758	3	1	4
BCE Inc.	50,195,295,486	1	2	3
TransCanada Corporation	34,470,218,730	3		3
Canadian Pacific Railway Limited	26,681,371,879	2	1	3
Crescent Point Energy Corp.	9,544,551,615	0	3	3
Canadian Tire Corporation Limited	9,339,751,690	0	3	3
CI Financial Corp.	8,203,153,302	1	2	3
Canadian Natural Resources Limited	39,156,812,126	2	0	2
Imperial Oil Limited	38,014,815,643	1	1	2
Alimentation Couche-Tard Inc.	23,831,543,828	2		2
Rogers Communications Inc.	20,268,275,830	0	2	2
Shaw Communications Inc.	11,559,726,437	1	1	2
IGM Financial Inc.	9,162,375,566	2	0	2
RioCan Real Estate Investment Trust	8,748,968,106	2	0	2
Loblaw Companies Limited	29,835,215,158	1		1
Pembina Pipeline Corporation	12,878,844,885	0	1	1
Intact Financial Corporation	11,724,245,872	1	0	1
Dollarama Inc.	9,633,782,697	0	1	1
Inter Pipeline Ltd.	8,600,689,979	0	1	1
CGI Group Inc.	16,027,823,538	0	0	0
Hydro One Limited	13,970,600,000	0		0
Metro Inc.	10,283,369,392	0		0
		782	239	1021

Note: See Section 2 for methods and limitations related to the corporate data used for the identification of reported and inferred companies. The term “related company” is used to cover a variety of relationships, e.g., parent company, subsidiary company, shell company. Relationships between the companies vary and are often unclear.



CANADIANS FOR TAX FAIRNESS advocates for fair and progressive tax policies aimed at building a strong and sustainable economy, reducing inequalities and funding quality public services.

Our vision is a country where taxation is regarded as a way to invest in Canada and Canadians. We believe in a progressive tax system where all individuals and corporations pay their fair share.

We believe that Canada in the 21st century should be a society in which economic disparities are decreasing, basic needs are met by investing in high-quality public services, economic policies are designed to create good quality jobs and protect our environment, and the will of the people drives our political process.

Our mission is to raise public awareness of crucial issues of tax justice and to change the way Canadians talk about tax. We also work to encourage a government policies and laws to resulting in more fair and progressive tax system.



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