



**The Joint Committee on Taxation of
The Canadian Bar Association
and
The Canadian Institute of Chartered Accountants**

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April 21, 2010

Dear Mr. Adams:

RE: Income Tax Interpretation Bulletins

We are writing further to our recent discussion with Mr. Randy Hewlett, Manager, Income Tax Rulings Directorate, concerning the Canada Revenue Agency's (CRA) evaluation of its inventory of Income Tax Interpretation Bulletins (ITs). We appreciate the opportunity to provide our views on this project.

We understand that among a number of options, CRA is considering cancelling or archiving its inventory of ITs in response to comments and recommendations contained in the Auditor General's Fall Report to Parliament (November 2009) regarding the improvement and timely updating of technical information provided by CRA to taxpayers. We understand that the concern raised is that users may not be notified on a timely basis when technical information set out in an IT no longer reflects current CRA policy following legislative amendments or case law developments.

ITs are a useful resource for tax practitioners, as they set out general guidance on CRA's interpretation and administration of particular provisions of the Income Tax Act. There are now multiple sources of technical information made available by CRA, e.g. published advance tax rulings, technical interpretations, Income Tax Technical News, guides, pamphlets, telephone inquiry services, conference responses, to name a few. However, while these various sources are often complementary, they are not co-extensive or interchangeable. These publications

generally serve different purposes. The level of detail and language differs from one publication to another, some publications are intentionally more technical than others and some publications are intended to be more authoritative than others. For example, income tax rulings are published in redacted form, such that readers may have difficulty determining their scope of application, and important facts relevant to the ruling given may not be disclosed. Tax practitioners may not find it appropriate to rely on new technical positions taken in income tax rulings until a number of rulings have been issued which evidence the existence of an established CRA rulings “practice” and administrative position. Accordingly, ITs remain an important source of CRA administrative guidance notwithstanding the other media used by CRA to communicate administrative positions.

We believe that archiving all ITs pending a review of the media through which CRA provides technical information to address the concern raised in the Auditor General’s Report would be counterproductive to both the CRA and taxpayers.

We expect that not all ITs contain outdated technical guidance. Moreover, ITs often cover a number of issues relating to the administration or interpretation of the Income Tax Act. Even if a legislative change or judicial decision were to affect technical information provided in an IT on a particular issue, administrative positions on other topics set out in the IT may continue to be current. Archiving an IT in such a case might prevent reliance on the outdated position, but at the same time, would create uncertainty regarding the continuity of the CRA’s interpretation on the other topics. With the possible exception of an established CRA position that continues to be reflected in other sources (e.g. technical interpretations or rulings), one could reasonably expect tax practitioners and taxpayers to seek confirmation of the CRA’s position on such topics through other means.

In our discussion with Randy, we agreed that tax practitioners were the most likely users of ITs. As a matter of practice, tax practitioners will consider the CRA’s technical guidance on a given issue in light of the current legislation, and relevant judicial developments (this practice would be necessary no matter how often ITs are updated). Accordingly, it appears unlikely that a tax practitioner would be misled where the CRA’s position has not been updated to reflect a change resulting from legislative or judicial action after the IT’s publication. A diligent tax practitioner could be expected to inquire about the continued application of the CRA’s position in such instances before relying on the IT. The same issue exists when using other sources of CRA information, such as technical interpretation letters or advanced tax rulings, that are not subject to an update.

We believe that the CRA can achieve its objective of updating technical information by initiating a high level review of ITs to first identify those that may no longer be current due to legislative or judicial change. A list could be posted on the CRA website to caution taxpayers that these ITs have been identified for review and may no longer reflect current administrative policy. The identified ITs could then be prioritized to determine the order in which they are reviewed. Ultimately, such a review might lead to the amendment, cancellation or consolidation of one or more ITs.

The Joint Committee would be pleased to collaborate with CRA to identify and prioritize ITs that require updating. We invite you to contact the undersigned to discuss how the Joint Committee can be of further assistance in this endeavour.

Yours very truly,



D. Bruce Ball
Chair, Taxation Committee
Canadian Institute of Chartered Accountants



Elaine Marchand
Chair, Taxation Section
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cc: Mr. Randy Hewlett, Manager, Income Tax Rulings Directorate
