

The Joint Committee on Taxation of  
The Canadian Bar Association  
and

The Canadian Institute of Chartered Accountants

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December 4, 2006

Mr. Wayne Adams  
Director General  
Policy & Planning Branch  
Income Tax Rulings Directorate  
Canada Revenue Agency  
Place de Ville, Tower A  
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320 Queen Street  
Ottawa, Ontario K1A 0L5

Dear Mr. Adams:

**Eligible Dividend Rules**

As requested by you at the 2006 CRA Roundtable, we are sending a list of questions regarding the application of the proposed eligible dividend rules. For completeness, these questions include the question you answered at the Roundtable. As you are aware, there is some urgency to obtaining responses to these questions since it appears that the legislation implementing the rules will be enacted soon. We have restricted the questions to issues of immediate concern.

Regarding the urgency, we would point out that corporations that pay dividends any time after royal assent is given will have to make their designations under subsection 89(14) at the time of paying the dividends. The 90-day period after royal assent for making designations applies only with respect to dividends paid before royal assent. Therefore, corporations may very soon face the requirement to make designations in respect of dividends at the time of payment. In particular, designation may be required at the time of payment of year-end dividends. Corporations, especially public corporations, need to know how they can make the designations in a practical way.


The Joint Committee made a submission to the Department of Finance on September 29, 2006 regarding the eligible dividend rules. Since this submission may be of interest to you, we are enclosing a copy. Items B.1 to B.3, E.2 and E.3 of the submission relate to some of the questions we have included on our list.

If you wish to contact us prior to Christmas regarding the questions, you should call Bruce Harris at 416.218.1403. After Christmas, you should call Bill Holmes at 604.602.4224. Our e-mail addresses are [bruce.harris@ca.pwc.com](mailto:bruce.harris@ca.pwc.com) and [holmes@thor.ca](mailto:holmes@thor.ca)

Yours truly,



**Bruce Harris, CA**  
Chair, Taxation Committee  
Canadian Institute of Chartered Accountants



**William R. Holmes**  
Chair, Taxation Section  
Canadian Bar Association

WRH:eb  
Encs.

cc: Mr. Lawrence Purdy, Department of Finance (without submission)

## **CICA – CBA JOINT COMMITTEE ON TAXATION**

### **QUESTIONS FOR CRA REGARDING APPLICATION OF ELIGIBLE DIVIDEND RULES**

#### **A. Notification of Shareholders**

1. Apart from written notices sent to shareholders, what methods of notifying shareholders will satisfy the notification requirement in subsection 89(14)? In particular, will this requirement be satisfied if a corporation publishes a statement on its website that dividends are eligible dividends or includes a statement to this effect in its annual reports? Can it be satisfied by sending emails?
2. Will any additional methods of notification be accepted for dividends paid in 2006? If so, and assuming that royal assent occurs this month, will these methods be limited to dividends paid before royal assent? (The 90-day period after royal assent for making designations applies only with respect to dividends paid before royal assent.)
3. Can a corporation give a general notice (e.g., in its annual reports or on its website) that all dividends it pays are eligible dividends, except to the extent it notifies shareholders otherwise?
4. Subsection 89(14) requires that notice in respect of a dividend be given *at the time* the dividend is paid. Will notice be considered to be given on a timely basis if (a) it is mailed on the day a dividend is paid, or (b) it is sent by email on the day a dividend is paid (assuming that emails are an acceptable form of notice)?

#### **B. Designation of Portion of Dividend Paid on Class of Shares**

1. With respect to a dividend paid on a class of shares, can a corporation designate the portion of the dividend paid to certain shareholders to be an eligible dividend, without designating the portion paid to other holders of shares of the class?
2. If the answer to question B.1 is no, what is the consequence if a corporation fails to give notification to one shareholder, e.g., because of clerical error or because it does not have the shareholder's address, or fails to give notification to one shareholder on a timely basis?
3. If the answer to question B.1 is no, does notification have to be given to non-resident shareholders? Such notification would seem to serve no purpose, since a

dividend received by a non-resident shareholder cannot qualify as an eligible dividend.

4. Can a corporation designate a fraction of a dividend paid to each shareholder—for example, 80% of a dividend—to be an eligible dividend? A non-CCPC may wish to do this where the corporation has some LRIP, and so a designation of the full amount of the dividend as an eligible dividend would result in an “excessive eligible dividend designation”. A CCPC may wish to designate a fraction of a dividend where its GRIP is less than the full amount of the dividend.
5. If the answer to question B.4 is no, what administrative relief will be provided so that corporations can maximize their eligible dividends in 2006? Without administrative relief, a non-CCPC that paid a large dividend at a time when it had some LRIP will have to either forego designating the dividend as an eligible dividend or else pay the penalty tax under Part III.1. A CCPC may be faced with this choice if has insufficient GRIP. The mechanism in subsection 185.1(2) for splitting dividends is not a practical option for many non-CCPCs, nor for some CCPCs. In considering this question, it must be borne in mind that the first draft of the eligible dividend rules was not released until June 29, 2006. Corporations paying dividends before this did not know the rules that would be applicable with respect to their dividend payments.

### **C. Dividends Received by Trusts**

1. Trusts will generally not know for some time whether dividends received by them in 2006 are eligible dividends. Can they make reasonable assumptions for T3 reporting purposes, e.g., that all dividends received from Canadian-resident public corporations are eligible dividends?
2. Many mutual fund trusts have a December 15 year-end. Dividends received by such trusts in the portion of their 2006 taxation year from December 16 to December 31, 2005 will not qualify as eligible dividends. Can such trusts use a reasonable method to estimate the amount of such dividends, e.g., 1/24 of all dividends received by the trust in its 2006 taxation year?

### **D. Dividends Received by Partnerships**

1. Could the CRA confirm that each partner’s share of a dividend received by a partnership is considered, for the purposes of all provisions relating to eligible dividends, to be a dividend received by the partner.

2. Could the CRA confirm that the definition of “eligible dividend” applies at the partner level, such that the determination of whether a partner’s share of a dividend is an eligible dividend depends on whether or not the partner is resident in Canada. (This is Finance’s position.)

**E. Year-End on Becoming or Ceasing to be a CCPC**

1. Will the CRA be providing relief from interest and late-filing penalties for corporations that have year-ends because of subsection 249(3.1)? This provision is applicable to taxation years that end after 2005, and therefore applies with respect to transactions that occurred before it was announced.
2. Can subsection 249(3.1) produce deemed taxation year-ends in 2005? For example, if a corporation with a January 31 year-end ceased to be a CCPC on March 1, 2005, could subsection 249(3.1) apply to deem it to have had a year-end on that date? This would appear to be the result if the taxation year referred to in the coming-into-force rule for subsection 249(3.1) is the taxation year before the application of the subsection.