



THE CANADIAN BAR ASSOCIATION  
L'ASSOCIATION DU BARREAU CANADIEN

June 17, 2008

Mr. Wayne Adams  
Director General  
Income Tax Rulings and Interpretations Directorate  
Policy and Legislation Branch  
Canada Revenue Agency  
16<sup>th</sup> Floor Place de Ville, Tower A  
320 Queen Street  
Ottawa, ON K1A 0L5

Dear Mr. Adams:

**Re: Deferred Income Plan Tax Section, Income Tax Rulings Directorate, Canada Revenue Agency**

I am writing on behalf of the National Pensions and Benefits Law Section of the Canadian Bar Association (CBA Section), to raise some concerns about two developments in the Income Tax Rulings Directorate (the Directorate). The CBA is a national association of over 37,000 lawyers, notaries, law teachers and students, and the CBA's mandate includes improvement in the law and the administration of justice. The CBA Section consists of lawyers who advise on registered pension plans and other retirement income arrangements, group benefits and executive compensation arrangements. Our members interact frequently with the Deferred Income Plans Section of the Directorate.

The Deferred Income Plans Section of the Directorate serves an important function by clarifying the law and CRA policy for taxpayers and their advisors. Not only has the Directorate offered formal advance tax rulings, it has interpreted and provided guidance on the meaning and application of provisions under the *Income Tax Act* relating to a wide variety of deferred income plans and compensation arrangements. We believe that this important role should continue.

In recent months, we have become concerned about two developments. First, we have noted significant uncertainty within the Directorate itself concerning the status, timing and appropriate scope of what appears to be an internal review of the area of compensation arrangements for various types of deferrals and conversions. This includes, for example, plans or arrangements with the option of electing to receive deferred compensation under alternative exceptions to the salary deferral arrangement rules. Similarly, plans that raise questions about the interaction between section 7 of the *Income Tax Act* and a particular salary deferral arrangement have been caught up in this apparent review process.

This uncertainty within the Directorate makes it very difficult for taxpayers and their advisers to be adequately informed about the nature and timing of any review. This has generated confusion about the types of compensation arrangements that the Rulings Directorate will consider ruling upon and the CRA's current perception of a variety of arrangements, including even those that have been subject to previous favourable tax rulings. This uncertainty impedes effective and efficient planning, and may gradually result in taxpayers being less inclined to seek advance tax rulings in this important area. The CBA Section believes that this development is undesirable from an overall tax policy perspective, and we strongly suggest that the status, scope and timing of the review be publicly clarified.

The second area of concern relates to the facility for informal telephone consultations with the Directorate. As practicing lawyers, we have found this a very helpful aspect of the Directorate's services. It permits consideration of several possible arrangements with the benefit of informal feedback from the CRA before expending the resources for a formal advance tax ruling or making commitments as to a particular compensation arrangement to executives or shareholders.

We note that recently this service seems to be discouraged by the Deferred Income Plans Section. Its telephone service now appears to be staffed primarily by students who cannot provide the technical assistance available from a qualified Rulings Officer. In fact, we have been expressly told by those now staffing the service that their role is limited to reviewing the Directorate's database of published commentary and repeating the statements in it.

A service that can only repeat what is already on the database available to most tax practitioners is of limited assistance. The CBA Section strongly encourages the Deferred Income Plans Section to return to its previous system of having a Rulings Officer deal with such inquiries. We have found that to be a useful and important system that ultimately assists taxpayers in the early stages of plan design.

We trust that our comments will be of assistance and would be pleased to discuss this further with you at your convenience.

Yours very truly,

*(original signed by Gaylene Schellenberg for Michel Benoit)*

Michel Benoit, Chair  
National Pension and Benefits Section

cc: Mickey Sarazin, Director, Income Tax Ruling Directorate