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Comité mixte sur la fiscalité de l'Association du Barreau canadien et de

l'Institut Canadien des Comptables Agréés

L'Institut Canadien des Comptables Agréés, 277, rue Wellington Ouest, Toronto (Ontario) M5V 3H2
Association du Barreau canadien, 865, avenue Carling, bureau 500, Ottawa (Ontario) K1S 5S8

Le 4 décembre 2006

Monsieur Wayne Adams
Directeur général
Direction des décisions en impôt
Direction générale de la politique et de la planification
Agence du revenu du Canada
Place de Ville, Tour A
16^e étage, bureau 16-44
320, rue Queen
Ottawa (Ontario) K1A 0L5

Règles sur les dividendes déterminés

Monsieur,

Comme vous l'avez demandé lors de la table ronde 2006 de l'ARC, nous vous faisons parvenir une liste de questions concernant l'application des règles proposées à l'égard des dividendes déterminés. Par souci d'exhaustivité, les questions auxquelles vous avez répondu à l'occasion de la table ronde sont comprises dans la liste. Comme vous le savez, il est assez urgent que nous obtenions des réponses à ces questions, puisqu'il semble que les dispositions législatives concernées soient sur le point d'être édictées. Nous nous sommes limités aux préoccupations les plus pressées dans le choix de nos questions.

Pour ce qui de l'urgence de la situation, permettez-nous de souligner que les sociétés qui verseront des dividendes après la sanction royale devront en effectuer la désignation en vertu du paragraphe 89(14) au moment du versement. Le délai de 90 jours suivant la sanction royale qui est imparti pour effectuer la désignation ne s'applique qu'aux dividendes versés avant la date de sanction. Par conséquent, les sociétés risquent de se trouver très bientôt devant l'obligation d'effectuer la désignation de dividendes lors de leur versement. En particulier, cela est susceptible de se produire au moment de verser les dividendes de fin d'exercice. Les sociétés, particulièrement les sociétés ouvertes, ont besoin de savoir concrètement comment procéder à la désignation.

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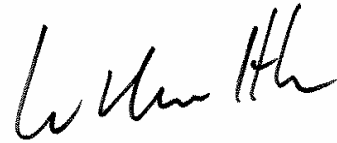
Le Comité mixte a soumis un mémoire au ministère des Finances le 29 septembre 2006 sur les règles concernant les dividendes déterminés. Ce mémoire pouvant présenter un intérêt pour vous, nous en joignons un exemplaire à la présente. Les points B.1 à B.3, E.2 et E.3 du mémoire ont trait à certaines des questions figurant sur notre liste.

Si vous souhaitez communiquer avec nous avant Noël au sujet des questions, veuillez appeler Bruce Harris au 416-218-1403. Après Noël, veuillez appeler Bill Holmes au 604-602-4224. Vous pouvez également nous joindre par courriel à bruce.harris@ca.pwc.com et holmes@thor.ca.

Veuillez agréer, Monsieur, l'expression de nos sentiments distingués.



Bruce Harris, CA
Président, Comité sur la fiscalité
L'Institut Canadien des Comptables Agréés



William R. Holmes
Président, Section de droit fiscal
Association du Barreau canadien

WRH:eb

p.j.

c.c. : M. Lawrence Purdy, ministère des Finances (sans le mémoire)

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 it 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.