



27 January 2012

The Honourable James M. Flaherty, P.C. M.P.
Minister of Finance
House of Commons
Parliament Buildings
Ottawa, Ontario
K1A 0A6

Dear Minister

PricewaterhouseCoopers LLP ("PwC") is pleased to provide tax proposals for your consideration as part of your pre-2012 budget consultations.

PwC supports the government's efforts to secure Canada's economic prosperity by facilitating of business investment, eliminating the budget deficit and enhancing key economic drivers such as technological innovation and development, work force productivity, efficient and effective infrastructures, and access to foreign markets for Canadian produced goods and services. These initiatives are essential in order to create and sustain a competitive business environment in Canada. So is the pursuit of efficient and competitive regulatory and income tax laws. A competitive Canadian business environment is necessary to attract the business investment and human capital, spur innovation and create economic growth and jobs.

Canada must compete with other nations for global business investment. A competitive business environment needs a competitive and efficient tax system. The key factors of a competitive and efficient tax system – competitive tax rates, efficient and sustainable sources of tax revenue, international and domestic tax rules that recognizes and accommodates modern business structures and practices, legislative and administrative certainty, and reduced compliance burdens – must continue to be a focus of the government.

Our tax proposals have the goal of enhancing the competitiveness and efficiency of Canada's tax system. By enhancing the competitiveness and efficiency of Canada's tax system, the competitiveness of Canada's business environment will be enhanced and will attract business investment and human capital needed to stimulate economic growth and to create more jobs for Canadians.

PricewaterhouseCoopers LLP

PwC Tower, 18 York Street, Suite 2600, Toronto, Ontario, Canada M5J 0B2

T: +1 416 863 1133, F: +1 416 365 8215, www.pwc.com/ca

This document was written by PricewaterhouseCoopers LLP ("PwC") in connection with the provision of tax services solely for the account of a PwC client. Any use which a person other than the PwC client makes of this document and any reliance on, or decisions made on the basis of, the contents of this document are the responsibility of such person. PwC accepts no responsibility for damages, if any, suffered by a person other than the PwC client as a result of decisions made or actions taken in reliance on the contents of this document.

"PwC" refers to PricewaterhouseCoopers LLP, an Ontario limited liability partnership, which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity.



The Honourable James M. Flaherty, P.C. M.P.
Minister of Finance
January 27, 2012

We appreciate having the opportunity to submit our tax proposals. We would welcome the opportunity to discuss them in greater detail with you or your staff.

Yours sincerely,

A handwritten signature in black ink, which appears to read "Nick Pantaleo" followed by a stylized flourish or initials.

Nick Pantaleo, FCA
Canadian National Tax Services
nick.pantaleo@ca.pwc.com
T: 416 365 2701

cc: Michael Horgan, Deputy Minister, Department of Finance
Louise Levonian, Associate Deputy Minister, Department of Finance
Nancy Horsman, Assistant Deputy Minister, Department of Finance



The Honourable James M. Flaherty, P.C. M.P.

Minister of Finance

January 27, 2012

Summary of Budget 2012 Recommendations

Towards a More Efficient and Competitive Canadian Corporate Tax System

1. Continue with the planned reduction of corporate income tax rates.
2. Work with the provinces to re-evaluate the efficiency and sustainability of the current mix of revenue generating measures to improve the way the federal and provincial governments raise tax revenue.
3. Pursue further efficiencies between the federal and provincial tax systems and in particular, move forward the initiative to implement a formal system of corporate group taxation.

Providing Better Access to Foreign Markets for Canadian Businesses

4. Continue and increase efforts to enter into international trade, investment protection and tax agreements, particularly with emerging countries, and ensure that such agreements are ratified and become effective as soon as possible so that Canadian businesses and the federal and provincial governments can begin to reap the benefits from such agreements.
5. Complete the review and analysis of the recommendations of the Advisory Panel on Canada's System of International Taxation ("the Advisory Panel") as soon as possible and be more open and transparent so that the government can benefit from a broader consultation with the tax community to ensure the tax system enhances Canada's international tax advantage, minimizes compliance costs for taxpayers and facilitates the administration and enforcement by the Canada Revenue Agency ("the CRA").
6. Continue the government's incremental approach to introducing changes to Canada's international tax rules by extending the current exemption system to all foreign active business income earned by foreign affiliates.

Fostering Innovation through the Tax System

7. To encourage the further development and commercialization of intellectual property ("IP") in Canada, follow the direction of the UK and other countries and consider introducing patent or innovation box legislation for Canada.
8. The current eligibility base of scientific research and experimental development ("SR&ED") expenditures should be maintained while looking for other opportunities to improve the compliance and administrative costs of the SR&ED program.
9. The current investment tax credit rate and refund rules for small and medium sized enterprises ("SMEs") should be maintained while looking for other ways to improve the cost effectiveness of the



The Honourable James M. Flaherty, P.C. M.P.
Minister of Finance
January 27, 2012

SR&ED program.

- 10.** A de minimis rule should be introduced to limit the SR&ED program benefits to expenditures above \$25,000.
- 11.** A dispute resolution committee consisting of the CRA and representatives from industry should be put in place to resolve disputes regarding the SR&ED program. The proposed creation of the Industrial Research and Innovation Council recommended by the Jenkins Panel could play an important role in working with industry and the CRA to put in place an effective dispute resolution mechanism.
- 12.** Consistent with the government's initiative to reduce "red tape," a government review of the existing information reporting requirements of the Income Tax Act is warranted.

Existing information reporting requirements that cannot be traced to improved tax administration efficiency should be eliminated and the implementation of additional information reporting provisions should be avoided if real tax administration efficiencies cannot be established.

To enhance greater certainty for Canadian business, the government should assign a high priority to ensuring that there is greater certainty in the tax system by ensuring that proposed legislation is enacted within a reasonable time, continuing the practice of issuing comfort letters, and endorsing administrative flexibility by the CRA.



The Honourable James M. Flaherty, P.C. M.P.
Minister of Finance
January 27, 2012

Background Discussion

Towards a More Efficient and Competitive Canadian Corporate Tax System

1. Raising tax revenue

In today's economic environment of slow growth and high deficits, it is tempting for governments to consider implementing measures that they have adopted in the past to raise revenue. Some of these measures, such as increasing corporate income, capital and payroll-type taxes, have a negative impact on economic growth and job creation. Canada must be more creative in how it raises revenue to provide the goods and services Canadians need, not just to help pull us out of the current economic malaise but also to ensure that when it does, Canada is able to retain the fiscal advantage it had going into the global recession and that has helped sustain it throughout.

Competitive corporate tax rates are fundamental to creating a globally competitive business environment. The government is to be congratulated for its continued commitment to the planned reductions in the federal corporate income tax rate and for encouraging the provinces to do the same. These cuts will reduce Canada's effective tax rate on business investment, giving Canadian businesses a competitive advantage. In our view, it is crucial that this policy be continued.

At the same time, the government needs to consider whether the level of our past reliance on corporate and personal tax rates is appropriate and sustainable. A recent study published by the C.D. Howe Institute concludes that the marginal cost to raising federal (and provincial) corporate and personal tax rates is very high, indicating that large welfare gains could be obtained by improving how Canada raises revenue.

Other countries are taking actions in this regard, recognizing that tax reform measures can promote economic growth, reduce deficits and spur job creation. Many are putting greater reliance on consumption taxes and making such systems more efficient. For example, a higher goods and services tax rate, which does not impact export sales or tax business inputs, would be preferable to maintaining uncompetitive corporate tax rates. Canada should be considering these and other alternatives, while taking the appropriate measures to ensure our tax system does not impose an undue burden on those least able to bear it.

Recommendations

We urge the government to continue with the planned reduction of corporate income tax rates.

The government should work with the provinces to re-evaluate the efficiency and sustainability of the current mix of revenue generating measures to improve the way Canada raises tax revenue.

2. Federal - Provincial tax system efficiencies

The efforts made by the government to increase the harmonization of federal and provincial taxes and to adopt a single tax administrator are greatly appreciated and needed. Harmonized sales and income tax



The Honourable James M. Flaherty, P.C. M.P.

Minister of Finance

January 27, 2012

systems promote compliance efficiencies and savings for Canadian businesses that would not otherwise be possible. This is another way to enhance the efficiency and competitiveness of Canada's tax system.

In particular, we are pleased that the government accepted the recommendation PwC made in our 2010 budget submission to consult with the provinces with the view to developing and adopting a formal system for corporate group tax reporting to permit the use of tax attributes of one corporate member of a commonly controlled group by another member of the group.

Recommendation

We encourage the government to pursue further efficiencies between the federal and provincial tax systems and in particular, to carry on with the initiative to implement a formal system of corporate group taxation.

Providing Better Access to Foreign Markets for Canadian Businesses

3. International trade, investment protection and tax agreements

We acknowledge the efforts made by the government in recent years to enter into more trade agreements, tax treaties and tax information exchange agreements ("TIEAs"). It is important that Canadian businesses be provided with greater and unfettered access to foreign markets, foreign investment protection and fair tax treatment in foreign nations, particularly with emerging markets in Asia, South America and Africa. These factors are critical to Canadian business decision making and competitiveness. Access to more and bigger markets will help Canadian companies be more productive and to create more jobs.

We are particularly pleased that, as PwC recommended in our 2011 budget submission, the government announced its intention to commence negotiations to sign a tax treaty with Hong Kong, which is generally considered by Canadian businesses as the gateway to Eastern Asia and acts as a hub for many Canadian businesses with interests in that part of the world. A tax treaty will ensure Canadian businesses have the same opportunities as their competitors in other countries that already have a tax treaty with Hong Kong. It will also ensure that Canada, through an exchange of information, has the ability to enforce its federal and provincial tax laws.

Recommendation

We recommend that the government continue and increase its efforts to enter into international trade, investment protection and tax agreements, particularly with emerging countries, and to ensure that such agreements are ratified and become effective as soon as possible so that Canadian businesses and the federal and provincial government can begin to reap the benefits from such agreements.

4. Enhancing Canada's international tax advantage

For Canadian companies to take full advantage of increased access to foreign markets, Canada's tax rules dealing with foreign investment must be competitive with the tax systems of our major trading partners.



The Honourable James M. Flaherty, P.C. M.P.

Minister of Finance

January 27, 2012

Recognizing the importance of Canada's international tax system in this regard, in November 2007, you established the Advisory Panel to ensure Canada's international tax policy and system keeps pace with global trends in supporting business investment abroad and attracting foreign investment into Canada, minimizes compliance costs and facilitates the administration and enforcement by the CRA. The Advisory Panel made a number of recommendations in this regard in its final report issued in December 2008. As well, it set out the principles it believed should guide the government in making changes to Canada's international tax system; principles that are consistent with the government's current policies directed at establishing Canada's competitive advantage.

In its August 19, 2011 press release announcing certain amendments to the taxation of foreign affiliates ("the August 19th amendments"), the government indicated that it "remains committed to continuing its review and analysis of all of the Panel's recommendations and consideration of further legislative developments".

It has been over 3 years since the release of the Advisory Panel's recommendations. While we applaud the measures taken in the 2009 and 2010 federal budgets that were recommended by the Advisory Panel, as long as some or all of its recommendations are still under consideration, and possibly others the government may propose, Canadian companies will lack certainty in terms of the tax policy direction impacting their business decisions.

Recommendation

We urge the government to complete its review and analysis of the Advisory Panel's recommendations as soon as possible and to be more open and transparent in its review so that it can benefit from a broader consultation with the tax community and ensure the international tax system enhances Canada's international tax advantage, minimizes compliance costs for taxpayers and facilitates the administration and enforcement by the CRA.

5. Exempt all foreign active business income earned by foreign affiliates

In its press release announcing the August 19th amendments, the government acknowledged that while the Advisory Panel recommended changes to the current system, which exempts only foreign business income earned through foreign affiliates located in treaty or TIEA countries, its current priority is to encourage countries to enter into TIEAs and to provide exempt surplus as an incentive to those countries which choose to do so. This is a policy the current government introduced in March 2007.

According to the Department of Finance website as at January 23rd, Canada has entered into or is negotiating tax treaties with 95 countries (by comparison, the OECD website states that there are 1500 treaties worldwide based on the OECD model tax treaty). In addition, Canada has signed or is in the process of negotiating 29 TIEAs.

We submit that after signing 29 TIEAs, resulting in Canada having tax treaties or TIEAs with 124



The Honourable James M. Flaherty, P.C. M.P.

Minister of Finance

January 27, 2012

countries, the government can declare the goal it set out in 2007 to be a success! We believe that there are few remaining countries that Canada must want or can get a tax treaty or TIEA with. To further delay the "de-linking" of our exemption system to tax treaties and TIEAs does not make sense at this point.

Extending the exemption system to active business income earned by all foreign affiliates can occur while the government continues its review of the other recommendations of the Advisory Panel and would be consistent with the government's previously announced intention to introduce changes to the international tax system on an "incremental" basis.

Recommendation

The government should continue with its incremental approach to introducing changes to Canada's international tax rules by extending the current exemption system to all foreign active business income earned by foreign affiliates.

Fostering Innovation through the Tax System

6. Taxation of IP developed in Canada

The report by the Independent Panel on Federal Support to Research and Development ("the Jenkins Panel" or "the Jenkins Report") entitled, "Innovation Canada: A Call to Action," and a paper recently published by the C.D. Howe Institute suggest that Canada would benefit from a more balanced approach to supporting R&D and innovation.

The current system of tax support is front-end loaded, pushing firms to undertake R&D through generous tax subsidies. At the same time, the rewards to R&D and other innovative activities are taxed at a rate that still exceeds the rates applied by most OECD countries. This creates a disincentive to commercialize and develop new products and services in Canada and likely has a negative impact on the level of R&D investment in and the amount of spillover benefits accruing to Canada.

The federal tax system should not discourage firms from turning R&D into commercially viable ideas and technologies as well as new products and services produced in Canada. To avoid this result, Canadian taxes on the fruits of R&D – the returns on IP and new and improved products and services – should be at internationally competitive levels. Past and planned corporate tax reductions are an important step in this right direction. But even with these tax cuts, Canada's overall business tax competitiveness will still lag behind the OECD. The tax system remains biased against the service sector as well.

In recent years there has been a trend in Europe toward lowering the tax on income derived from IP through a mechanism referred to as a patent or innovation box (for example, the UK is in the process of adopting such a mechanism and something similar has been suggested in the U.S.). As suggested by the Advisory Panel, the government should monitor these developments and study whether there may be opportunities to improve the tax treatment of IP income.

The failure to address the competitive threat created by low taxes on IP income in other countries could



The Honourable James M. Flaherty, P.C. M.P.

Minister of Finance

January 27, 2012

result in IP development and commercialization being shifted outside Canada. The failure is sure to reduce the likelihood that IP acquired by Canadian companies, as they invest and carry on business abroad, will be transferred to Canada for further development and commercialization in Canada.

Recommendation

To encourage the further development and commercialization of IP in Canada, we recommend that the government follow the direction of the UK and other countries and consider introducing patent or innovation box legislation for Canada.

PwC Comments on Recommendations in the Jenkins Report

The Jenkins Report originated from a 2010 federal budget proposal calling for a comprehensive review of federal programs that support business innovation. The government's objective in creating the Jenkins Panel was to encourage business innovation by using resources more effectively, thereby improving our global competitiveness. The government recognizes that, despite its high level of federal R&D support, Canada continues to lag behind other countries in business R&D spending, rates of commercialization of new products and services, and productivity growth.

Below are our comments and recommendations on the Jenkins Report.

7. Access to ITCs for SR&ED expenditures

To reduce compliance and administrative costs, the Jenkins Report recommended that ITCs benefitting SMEs should only be based on labour related costs and that the ITC rate should be increased.

This recommendation assumes that the compliance and administration costs of the SR&ED program are due to the complexity in computing non-labour related expenditures. In fact, based on the numerous written submissions that the government has received in recent years, there is ample evidence that the complexity is in determining SR&ED eligibility of the work undertaken (for example, meeting the definition of SR&ED); it is not in computing the non-labour related expenditures.

We believe there are several disadvantages to introducing a labour based approach to SMEs.

- It will disadvantage SMEs that are capital intensive and have high, non-labour expenditures. SMEs do acquire capital assets, build prototypes and require significant materials and components as part of the SR&ED process. A higher ITC rate is unlikely to adequately compensate SMEs for foregone ITCs if capital, materials and overhead costs will not be part of the SR&ED expenditure base.
- It will result in two different SR&ED programs, one for large firms that will see no changes to their current SR&ED expenditure base, and a greatly reduced one for SMEs with a lower SR&ED expenditure base that will result in reduced benefits under the SR&ED program. Consequently, the capability of SMEs to carry out R&D will largely depend on their ability raise funds to finance such activities.



The Honourable James M. Flaherty, P.C. M.P.

Minister of Finance

January 27, 2012

- There will be a bias towards labour intensive sectors, such as the information technology sector, at the expense of non-labour intensive sectors, such as manufacturing. Prototyping and experimental production can be expensive for SMEs that play an essential role in the innovation chain. Capital investment in tangible and intangible property is an essential element to productivity and innovation.
- The manufacturing industry could lose spin-off benefits. Under the current rules, new equipment that is used all or substantially all in SR&ED is eligible for ITCs. This tax policy, regarded favourably by the manufacturing industry, will be diminished.
- The Jenkins Panel recommends that eligible contract payments be reduced by 50 percent to effectively represent the labour portion of the SR&ED. However, the labour based approach will not relieve the current complexity around contract payments which requires the determination whether the contract payment to a SR&ED performer can be claimed by the payer or the performer. The Panel's recommendation does not resolve this complexity.

We believe that before a decision is made to move to a labour based SR&ED program, the government should consider setting up a national joint conference, similar to the one held in Vancouver in 1998, to explore other alternatives to overcome complexity in the SR&ED program and to reduce the administrative burden on taxpayers.

At the 1998 Vancouver conference, a 13 point action plan was agreed to with the CRA. A steering committee was established comprising of industry representatives, practitioners and the CRA to work to improve the administration and reduce the compliance burden and complexity of the program. As a result, the compliance costs of the program were greatly reduced for a period of time afterwards. We believe a similar approach, with industry representatives, practitioners and the CRA working together on program issues, specifically, on SR&ED eligibility, which has been identified as the single most dominant issue currently facing all stakeholders, complexity of the program and the administrative issues can be reduced.

Recommendation

We recommend the current eligibility base of SR&ED expenditures be maintained while looking for other opportunities to improve the compliance and administrative costs of the SR&ED program.

8. Maintain current ITC refund rules for all SMEs

The Jenkins Report recommends reducing the SR&ED tax credit by introducing incentives that encourage growth and profitability of SMEs while decreasing the refundable portion of ITCs over time and redeploying the savings to fund new and/or enhanced support for innovation/commercialization.

The Report states that based on analysis by the Department of Finance of start-ups from 2000-2004, within 5 years following incorporation, approximately 2 percent grew into large firms that continue to



The Honourable James M. Flaherty, P.C. M.P.

Minister of Finance

January 27, 2012

undertake R&D. The Jenkins Panel felt that the effectiveness of the program would be improved if its parameters could be adjusted to target more of the benefit towards firms that have a greater probability of profitability.

The following factors suggest that reducing the refund of ITCs will have a negative impact on SMEs.

- As with larger corporations, a large majority of SMEs that claim SR&ED incentives are already in production and continually make improvements to their suite of products or develop new products. The profitability of these corporations from year to year depends on various market and other factors. Any reduction in the current ITC benefit will hinder their ongoing research capability and business viability because they will have to find alternative funding to make up for the reduction in the SR&ED benefits.
- This recommendation is more appropriate for individuals/sole proprietorships that do SR&ED with very little plans to move to the pre-production/production phase, and also to start-ups that are beginning to get into the initial R&D phase. This group relies heavily on federal support to subsidize their business rather than having their sights on continuing the SR&ED and growing into profitable firms. As this group of taxpayers is a very small percentage of the SMEs making SR&ED claims, the savings from implementing this recommendation could be small. A general reduction in the incentives will hurt the larger population of SMEs that are currently in production and running viable businesses and undertaking ongoing R&D.
- Any benefits (refundable ITC and non-refundable portion of ITC used to offset taxes) that are claimed under the existing program are brought into income and subject to tax in a subsequent year. Hence, there is an inherent reduction to the refundable and non-refundable ITC benefits that SMEs receive. The panel failed to address this important fact.
- Under the panel's new approach to funding SMEs, claimants must convince the funding authority that they have a greater probability of achieving high R&D based growth and profitability. Targeting benefits only to specific companies or industries results in a significant shift from the current market driven approach to R&D investment. A tax credit regime levels the playing field for all companies. Direct funding programs could themselves have significant compliance costs because companies must demonstrate the potential for innovation to be successful. Choosing winning sectors and/or taxpayer that can benefit from direct funding is a difficult endeavour as it is difficult to pick the winners.
- Regional disparities are likely to arise because regions will want to ensure that their R&D funding is directed to the specific needs of their constituents.
- This recommendation could also discourage higher risk SR&ED projects being undertaken in industries, such as biotechnology, where growth and profitability will be uncertain for many years.



The Honourable James M. Flaherty, P.C. M.P.
Minister of Finance
January 27, 2012

Recommendation

We recommend that the current ITC rate and refund rules for SMEs be maintained while looking for other ways to improve the cost effectiveness of the SR&ED program.

9. Improving the cost effectiveness of the SR&ED program

The CRA has indicated that they are receiving certain smaller dollar value claims that they believe are ineligible and possibly abusive. The Jenkins Report also considered improving the effectiveness of the SR&ED program by reducing the amount of SR&ED tax credit assistance and proposing to introduce incentives that encourage the growth and profitability of SMEs.

To help make the program more cost effective, a de minimis rule could be introduced to limit the program benefits to projects that incur SR&ED expenditures above \$25,000, unless they are multi-year projects that will incur expenditures above this threshold over the life of the project. Such multi-year projects could be identified in the Form T661 in the first year, and claimed in a subsequent year when the threshold has been met.

The savings arising from a de minimis rule could be used to support innovation by SMEs as proposed in the Jenkins Report.

Recommendation

We recommend that a de minimis rule be introduced to limit the program benefits to expenditures above \$25,000.

10. Implement a dispute resolution mechanism to deal with disagreements over SR&ED eligibility issues

In the 2008 federal budget, the government tried to address certain administrative challenges and to ensure greater predictability and consistency. One of the administrative measures identified included, "reviewing dispute resolution procedures to ensure their effectiveness". The CRA has up to now not delivered on this measure.

The CRA's guidelines provide for an independent "Administrative Second Review" when there is disagreement on SR&ED project eligibility between the taxpayer and the Research and Technology Advisor ("RTA"). However, in the last 3-4 years there has been reluctance on the part of Assistant Directors of SR&ED across the country to allow requests for such reviews. This issue has been discussed with the CRA's senior management, the CRA's Ombudsman, and at the ministerial level with no success.



The Honourable James M. Flaherty, P.C. M.P.
Minister of Finance
January 27, 2012

Recommendation

A dispute resolution committee consisting of the CRA and representatives from industry should be put in place to resolve disputes between RTAs and taxpayers. The proposed creation of the Industrial Research and Innovation Council recommended by the Jenkins Panel could play an important role in working with industry and the CRA to put in place an effective dispute resolution mechanism.

Enhancing the Efficiency of Tax Administration in Canada

11. Review of information reporting requirements

In recent years, there has been a significant increase in the amount of financial and other information that taxpayers must provide to the CRA for tax purposes. The stated goal behind this escalation in demand for information is intended to create greater taxpayer transparency so that the tax authorities can better assess tax risk and achieve better tax audit efficiencies.

Efficient tax audits that lead to quality audit results in reasonable time frames would be a welcomed result of this information reporting; however, for most taxpayers, this has not been their experience. In other words, while the increased information reporting requirements have resulted in a significant increase in the tax compliance burden for taxpayers, but they have not yielded the expected tax administration efficiencies.

Recommendations

Consistent with the government's initiative to reduce "red tape," a government review of the existing information reporting requirements in the Income Tax Act is warranted.

Existing information reporting requirements that cannot be traced to improved tax administration efficiency should be eliminated and the implementation of additional information reporting provisions should be avoided if real tax administration efficiencies cannot be established.¹

12. Enhancing of tax certainty

Taxpayers need to know what the tax rules are in order to properly comply. They also need to know that the rules will apply as they were intended to apply, consistent with the underlying tax policy. If that is not the case, the ability of Canadian businesses to plan and organize their tax and financial affairs is impaired. Where the tax rules do not produce intended tax results in respect of *bona fide* business transactions, taxpayers need to know that the tax rules will be modified so that they will yield the appropriate tax result.

¹ In this regard, we note that the Advisory Panel had undertaken a preliminary review of options to improve some of the forms and returns to gather information on cross-border transactions. See, Advisory Panel on Canada's System of International Taxation, *Final Report: Enhancing Canada's Competitive Tax Advantage: A Consultation Paper Issued by the Advisory Panel on Canada's System of International Taxation* (Ottawa: Department of Finance Canada, December 2008), paragraph 7.70.



The Honourable James M. Flaherty, P.C. M.P.
Minister of Finance
January 27, 2012

In recent years, taxpayers have been faced with a significant amount of tax uncertainty. This uncertainty can be attributed to a number of factors. First, the prior practice of preparing technical bills and enacting them into law in a timely and regular manner has, in recent years, not been followed. Consequently, the enactment of technical amendments that were announced or recommended in comfort letters some years ago is suffering significant delay. Second, there is a sense in the tax community that there is a growing reluctance to issue comfort letters in circumstances where the tax law does not produce a tax result that is consistent with the underlying tax policy. Third, the CRA seems reluctant to establish administrative positions that may be consistent with the policy underlying the provision but that is not supported by the plain meaning of the tax legislation or proposed tax legislation that has remained in draft form for several years.

The resulting uncertainty and unfair tax results in respect of *bona fide* business transactions are seriously and negatively impacting the business operations of Canadian businesses.

Recommendation

Tax certainty is important to Canadian business. Canadian business would benefit significantly if the government assigned a high priority to ensuring that there is greater certainty in the tax system by ensuring that proposed legislation is enacted within a reasonable time, continuing the practice of issuing comfort letters, and endorsing administrative flexibility by the CRA.

13. Other

We respectfully refer you to our submission dated December 16, 2011 in regards to "Proposals to Improve the Caseload Management of the Tax Court of Canada" (see the Department of Finance Backgrounder released on November 11, 2011). Included in that submission are recommendations that we believe will help reduce the caseload of the Tax Court. Included among our recommendations were the following:

- The CRA should increase the awareness and enforcement of its policies and procedures throughout the agency to reduce audit disputes.
- There should be a greater willingness for auditors to refer issues to CRA headquarters.
- The funding of the Rulings Directorate in Ottawa should be reviewed with a view to expanding and strengthening its experience and expertise.
- A new level of appeals should be introduced before a case is referred to the Tax Court.
- Increase accessibility to the Advance Pricing Arrangement program.

Our entire submission is available at: <http://www.pwc.com/ca/en/canadian-national-tax-service/government-submissions/2011-12-tax-court-canada-case-load.jhtml>



The Honourable James M. Flaherty, P.C. M.P.

Minister of Finance

January 27, 2012

Certain of our recommendations will involve increase funding for training of CRA officials, including auditors. While we understand the government is looking to cut departmental spending to reduce the deficit, as the primary revenue collector for the federal and most provincial governments, care should be exercise to not deplete the CRA of needed resources.