

# Tax memo

Canadian tax updates



## TCDR alert: Referrals to the Transfer Pricing Review Committee – More emphasis on penalty referrals

*The CRA increased its focus on the transfer pricing penalty referral process.*

*December 18, 2012*

The Canada Revenue Agency (CRA) recently published TPM-13 (one in a series of Transfer Pricing Memoranda) on referrals to the Transfer Pricing Review Committee (TPRC). The TPRC reviews:

- the application of penalties on transfer pricing adjustments; and
- all recharacterizations proposed by auditors.

TPM-13 is the third memorandum on this topic: it replaces TPM-07, issued in August 2005, which replaced the original TPM-01, issued in March 2003.

The main difference from TPM-07 is its increased focus on the penalty referral process and the role of the taxpayer in this process. In particular, TPM-13 provides more clarity with respect to the information the taxpayer is entitled to receive.

TPM-13 also introduces some minor procedural changes.

### ***Penalty referral***

Although the penalty referral process has not changed materially, TPM-13 clarifies that taxpayers must receive a draft penalty referral report at the same time as the CRA field auditor's proposal letter. This puts taxpayers in a better position to respond to any allegations made by the auditor relating to the quality of contemporaneous documentation. In the past, some auditors did not provide the referral report in time for the taxpayer to respond to those allegations.

Taxpayers now have a standard 30 days to respond.

TPM-13 also requires that the CRA field auditor include the taxpayer's representations with the penalty referral report submitted to the TPRC, and that the taxpayer receive a copy of the formal report immediately before the report is presented to the TPRC. Although taxpayers still face the possibility that the field auditor's comments may change before the report is submitted to the TPRC, taxpayers will now see these changes in the referral report.

### ***Recharacterization referral***

The recharacterization referral process has not changed materially.

One point of clarification is that the CRA field auditor must now seek assistance and refer the issue to the TPRC as soon as he or she becomes aware that there may be a recharacterization

assessing position. TPM-13 also clarifies that representations and additional information provided by the taxpayer “will be considered” by the auditor when completing the referral report.

## ***PwC observations***

By releasing TPM-13, the CRA acknowledges that the process to date has not been uniform and that all taxpayers must be treated fairly. Fair representation includes being aware of the content of the auditor’s referral report, so that the taxpayer’s arguments can specifically address any issues that are raised.

From the taxpayer’s perspective, the updated guidance is an improvement, particularly in respect of the CRA’s disclosure responsibilities. This development should allow for a smoother and more balanced process that gives the taxpayer both a voice and full information.

## ***Need more help?***

For more information, please contact any of the following individuals.

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