In recent years, perceptions of widespread aggressive tax planning by corporations have led Canada and other nations to implement legislation and administrative policies compelling or encouraging corporations to adopt more transparent practices. This article describes some of the global context for recent tax transparency initiatives. It also discusses some corporate governance considerations in relation to the Canada Revenue Agency's (CRA's) desire for Canadian corporations to voluntarily disclose perceived high-risk or uncertain tax positions (Canada's version of the enhanced tax relationship with corporations). The authors suggest that the voluntary adoption of more transparent disclosure practices by Canadian corporations can be consistent with their best interests. However, a number of barriers exist that inhibit the establishment of effective enhanced relationships between corporations and the CRA, including institutional limitations that result from the failure of the CRA to establish enhanced audit and dispute resolution practices. The authors suggest that the success of Canada's tax transparency initiative depends on the CRA's willingness and ability to remove these barriers and to demonstrate that, in adopting more transparent disclosure practices, corporations can realize meaningful benefits.

**KEYWORDS:** AGGRESSIVE TAX PLANNING ■ AUDITS ■ CANADA REVENUE AGENCY ■ OECD ■ TAX AVOIDANCE ■ TRANSPARENCY
Introduction

At the 2012 annual conference of the Canadian Tax Foundation, Canada Revenue Agency (CRA) officials expressed a desire for cooperative disclosure by corporate taxpayers of transactions entered into that involve an element of risk or uncertainty from a tax perspective.¹ That statement was made in the course of broader discussions covering other recent tax transparency initiatives adopted by the CRA. Similar initiatives have been adopted or are under consideration by tax authorities across the globe. Tax transparency is also actively promoted by the Organisation for Economic Co-operation and Development (OECD).

In the last three or four years, tax transparency has emerged as a key transglobal public policy objective. It is based on a desire among tax authorities to combat international tax evasion and aggressive tax-avoidance practices. Tax transparency is also promoted in the context of efforts to streamline bureaucracies in the face of resource constraints, and it is seen as a politically acceptable way for debt-laden governments to increase tax revenues without necessarily raising tax rates.

Finally, public and political pressure continues to focus on amounts of tax paid by corporations, and some notable allegations of unscrupulous tax-avoidance schemes have been widely reported in the press.²

It is important for Canadian corporations, particularly large corporations, to appreciate the political context in which the CRA’s tax transparency policies have emerged. Obviously, there are prospects for reputational risks related to tax avoidance. Large corporations in Canada are now compelled to focus on governance issues related to tax-risk assessment policies. Indeed, forcing such analysis onto the corporate governance agenda is a primary goal of the CRA’s policies, as it is for tax administrations in other jurisdictions.

Yet the political context also informs the framework for appropriate corporate governance responses. At first blush, it might seem that the answer to allegations of unacceptable levels of aggressive tax avoidance is simple: Canada has a general anti-avoidance rule (GAAR), and the courts are the best arbiter of what amounts to abusive tax avoidance. While this is true, GAAR and the role of the courts are only part of the suite of multidisciplinary considerations that may influence corporate governance responses in the context of tax transparency and compliance.

Unfortunately, political debates do not always strive for correctness, as to either fact or law. Corporate governance policies need to incorporate a broader framework of considerations to respond to a tax transparency context that is not focused exclusively on tax-law principles.

The CRA’s expressed desire for cooperative disclosure is a call for enhanced relationships between the CRA and corporate taxpayers. Enhanced relationship programs have been formally adopted in some other countries. In Canada, to this point, the CRA’s efforts in this area have been directed at promoting voluntary cooperation. However, the CRA has suggested that the adoption of corporate governance practices that include programs to identify and assess tax risk at the highest levels of corporate management, as well as certification of tax items, is a factor in the CRA’s risk-based audit initiatives for large corporations. The risk-based audit program thereby incorporates features of an enhanced relationship program.

With this in mind, our primary focus in this article is to consider recent tax transparency initiatives from a particular corporate governance perspective. Although a multifaceted review of governance practices is certainly warranted, we suggest that in the process of reacting to public policy initiatives, corporations should also not lose sight of traditional corporate governance objectives. There is a danger that tax policy

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in this area may be informed by a political characterization of abusive tax avoidance, rather than by the legal meaning of tax avoidance. To help prevent such a result, corporations should participate in identifying a broader range of possible benefits that can be realized by both parties to an enhanced relationship.

To achieve real success, Canadian corporations and the CRA should both appreciate the fact that legitimate tensions can exist between the objectives of tax authorities and corporate objectives to which corporate governance practices are directed. It is important not to let competing objectives frustrate the process.

We therefore suggest that Canadian corporations should seek to establish enhanced relationships with the CRA where possible. However, in doing so, they need to be prepared to incorporate tax risk into governance policies that encompass a broader range of considerations than those that are normally of concern to tax managers.

Canadian corporations should accept the CRA’s call for enhanced relationships at face value, so that they will be in a position to seek meaningful reciprocation from the CRA. In particular, corporations should aspire to secure benefits from participation that are suitable to their particular tax issues, and should be prepared to support a high ground position in the event of uninformed political debate. One would hope, though, that any public debate in Canada on the issue of tax transparency will not become as politically charged as it has been elsewhere. For example, in the United Kingdom, investigations by the House of Commons Public Accounts Committee into transfer-pricing practices of notable multinational companies (Starbucks, Amazon, and Google) attracted significant negative public commentary from members of Parliament as well as public interest groups.³

In the interest of trying to realize mutual benefits from Canadian tax transparency initiatives, it is important for both sides to appreciate the full breadth of the benefits that may be achieved. On the one hand, corporations stand to gain by, among other things, reducing compliance costs and receiving an expeditious review of transactions that carry an element of risk (which will lead to greater certainty with respect to tax positions and thus assist corporate planning). On the other hand, the government stands to gain if it is able to better focus its audit operations on high-risk taxpayers, thereby efficiently allocating public funds and, ideally, collecting higher levels of tax revenue in the process.

To date, the benefits that corporate taxpayers can expect to receive from Canada’s tax transparency initiatives have essentially been defined by the CRA. Consistency of practice and overall realization of stated benefits are not widely known. Any measurement of the success of current programs is limited to those corporate taxpayers that have undergone a risk-based review.

It seems clear that cooperating with the CRA in its tax transparency campaign will require corporations to adapt, to some degree, to the prevailing political landscape. However, corporate governance principles may require that in addition, corporations enter into an enhanced relationships with the CRA with a view to promoting their self-interest. To the extent that corporations strive to overtly define and then realize the benefits that they hope to gain from the relationship, such efforts will be consistent with their best interests.

**CORPORATE GOVERNANCE CONSIDERATIONS**

Corporations have attracted a certain amount of public and political scrutiny over the past couple of decades, as a result of financial scandals and economic downturns. Regulatory responses to those issues have been directed mainly to corporate governance practices.

More recently, the focus of public and political scrutiny has shifted to corporate tax policy. The concept of tax governance has been floated as a vehicle for an appropriate corporate response, with the suggestion that corporations adopt new tax governance practices as a subset of their overall corporate governance practices. Such recommendations, to this point, have been predominantly reactive.

In that context, it is worthwhile to briefly revisit certain foundational corporate governance principles. In Canada, the duties of corporate directors have been enshrined in federal and provincial legislation. For example, section 102(1) of the Canada Business Corporations Act⁴ (CBCA) provides:

(1) Subject to any unanimous shareholder agreement, the directors shall manage, or supervise the management of, the business and affairs of a corporation.

Pursuant to section 121 of the CBCA, directors may delegate certain management powers to corporate officers. Section 122(1) then sets out the responsibilities of directors with respect to the performance of their duties:

(1) Every director and officer of a corporation in exercising their powers and discharging their duties shall
   (a) act honestly and in good faith with a view to the best interests of the corporation; and
   (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

In *Peoples Department Stores*,⁵ the Supreme Court of Canada has established that the director’s duties described in sections 122(1)(a) and (b) of the CBCA are separate and distinct duties, which are designed to secure different ends. The duty in section 122(1)(a) is a fiduciary duty, commonly referred to as a duty of loyalty. It requires

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⁴ RSC 1985, c. C-44, as amended.
⁵ *Peoples Department Stores Inc. (Trustee of) v. Wise*, 2004 SCC 68.
that, in resolving competing interests, directors are obliged to act in good faith with a view to the best interests of the corporation.6

The court reiterated and elaborated on this view in the subsequent case of BCE Inc.:7

The fiduciary duty of the directors to the corporation originated in the common law. It is a duty to act in the best interests of the corporation. Often the interests of shareholders and stakeholders are co-extensive with the interests of the corporation. But if they conflict, the directors’ duty is clear—it is to the corporation: Peoples Department Stores.8

Section 122(1)(b) of the CBCA imposes a different duty—a duty of care—that has been held to be more open-ended. This provision enshrines the longstanding common-law principle that directors must satisfy a duty of care or risk being found to be grossly negligent with respect to the affairs of the corporation. As the Supreme Court noted in Peoples Department Stores, section 122(1)(b) puts pressure on directors to establish good corporate governance rules, the existence of which may provide a defence to allegations that they have breached their duty of care.8

In practice, corporations have adopted the concept of active monitoring as a means, among other things, of helping directors to discharge their duty of care. Active monitoring relates to the active supervision of management and corporate initiatives by directors directly, or through board committees. It implies that directors are charged with oversight of the strategic direction of the corporation and of the decisions and actions of management in implementing corporate strategy, without taking part in the day-to-day management of the corporation.9

New internal controls put in place by corporations as a governance practice have mostly been prompted by Canadian securities regulators in response to similar requirements legislated by the US government in the Sarbanes-Oxley Act.10 One such example is the requirement imposed on chief executive officers (CEOs) and chief financial officers (CFOs) to file certificates stating that they are responsible for establishing and maintaining disclosure controls and procedures, and internal controls in respect of financial reporting.

The purpose of internal controls, implemented as a corporate governance practice, is as follows:

Internal controls are put in place to keep a corporation on course toward profitability goals and achievement of its mission, and to minimize surprises along the way. They enable management to deal with rapidly changing economic and competitive environments, shifting customer demands and priorities, and restructuring for future growth.

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6 Ibid., at paragraphs 32, 33, and 47.
7 BCE Inc. v. 1976 Debentureholders, 2008 SCC 69, at paragraph 37.
8 Peoples Department Stores, supra note 5, at paragraphs 57 and 63.
Internal controls promote efficiency, reduce risk of asset loss and help ensure the reliability of financial statements and compliance with laws and regulations. They are not limited to financial matters.\textsuperscript{11} However, at the root of such measures is a concern with the protection of financial stakeholder interests.

In the United Kingdom, regulations have been imposed requiring the senior accounting officer (SAO) of certain large qualifying companies to certify annually that he or she has established and monitored accounting arrangements capable of supporting accurate tax returns across all major taxes.\textsuperscript{12}

In Canada, the CRA has suggested that clear corporate governance frameworks that ensure that all tax risks are properly identified and addressed on a timely basis is an important factor in its new risk-based approach to audits of large corporations.

There may well be an interesting argument that the types of financial stakeholder interests that should compel modification of corporate governance practices in Canada are not necessarily commensurate with the interests of tax authorities, who seek to ensure that tax-risk assessments are consistent with their views of abusive tax avoidance. However, it is beyond the scope of the present discussion to pursue that argument here, or to delineate all of the possible stakeholder interests that corporate directors in Canada must keep in mind when managing the affairs of a corporation. Directors perform a wide range of duties. Moreover, they may pursue a wide range of corporate social objectives that, while legitimate, may not clearly be informed by the legal duty of care.

As previously mentioned, consideration of context is important in the present tax transparency environment. In some jurisdictions, calls for tax transparency policies have been founded on views about corporate responsibility and even morality. This political context is discussed in more detail later in this article.

**THE ENHANCED RELATIONSHIP**

It is important to first understand the concept of the enhanced relationship. According to the OECD,

the enhanced relationship is based on establishing and sustaining mutual trust between taxpayers and revenue bodies. This can be achieved through the following behaviours:

- in dealings with taxpayers, revenue bodies demonstrating understanding based on commercial awareness, impartiality, proportionality, openness through disclosure and transparency, and responsiveness; and
- in dealings with revenue bodies, taxpayers providing disclosure and transparency.\textsuperscript{13}

\begin{itemize}
\item \textsuperscript{11} Dorval, supra note 9, at 138.
\item \textsuperscript{12} See Finance Act 2009 (UK), 2009, c. 10, section 93 and schedule 46.
\item \textsuperscript{13} Organisation for Economic Co-operation and Development, *Study into the Role of Tax Intermediaries* (Paris: OECD, 2008), at 40.
\end{itemize}
The expectation in an enhanced relationship is that both the corporation and the revenue body will do more than is required by statute in order to establish and maintain mutual trust.

The question then arises as to how the best interests of a corporation are correlated with the establishment of a successful enhanced relationship. Whatever the breadth of the stakeholder interests that are of concern to corporations, for the purpose of the present discussion it suffices to say that the best interests of Canadian corporations will continue to be legitimately defined by the protection of shareholder value and the realization of profit. In order to achieve true success in the implementation of voluntary tax transparency initiatives, public authorities might do well to appreciate the legitimate point that corporations will be motivated to enter into an enhanced relationship if (among other reasons) it is in their best interests to do so.

One might suggest that an important measure of the success of tax transparency policies in Canada should be the ability to preserve enhanced relationships where the parties disagree. In such cases, it should be incumbent upon the CRA to recognize that legitimate corporate objectives can be inconsistent with the government’s objectives without causing a change in the corporation’s risk status. Care should be taken to ensure that subjective views of abusive tax planning do not damage the relationship.

Tensions can arise where the parties to the enhanced relationship have different objectives. There are a number of possible sources of tension between tax authorities and corporate taxpayers. As acknowledged by various tax authorities who have established transparency initiatives, there is a requirement for trust between the parties. Furthermore, both parties must be willing to accept a certain amount of give-and-take in approaching tax compliance matters, in order to make the relationship work.

Corporations, for their part, would be well advised to step back and consider how tax-risk analysis is aligned with their broader corporate objectives, including important social policy objectives and reputational concerns. However, we also suggest that the best interests of Canadian corporations are served by recognizing what they might be giving up in entering into the enhanced relationship requested by the CRA. Corporations should be assertive in communicating to the CRA the steps that they have taken in fostering an enhanced relationship, and they should seek to ensure that such steps are recognized by the CRA in the form of meaningful improvements to procedures for audits and dispute resolution. Moreover, corporations should not be content to allow the CRA to define the range of benefits that might arise, but should seek to tailor the benefits to their specific issues and objectives.

These suggestions are not inconsistent with other legitimate corporate concerns. Careful blending of tax-risk analysis with other corporate priorities can lead to a meaningful enhanced relationship with the CRA. If the CRA’s suggestion that real benefits can be achieved is taken at face value, it is incumbent upon corporations to ensure that meaningful benefits are realized. By that measure, the best interests of corporations are served by going beyond the adoption of merely reactive governance.
measures and working to seeking to establish and maintain an enhanced relationship with the CRA that produces tangible benefits, specific to the circumstances of the particular corporation.

THE CRA’S CURRENT TAX TRANSPARENCY INITIATIVES

Risk-Based Approach to Audit

As noted above, the CRA’s risk-based audit program incorporates principles of an enhanced relationship.

The program was introduced in 2010, when the CRA instituted a new approach to audits of Canadian large-business taxpayers. Under the program, all large-business taxpayers are assigned to one of three categories—high risk, medium risk, or low risk—according to the CRA’s assessment of the taxpayer’s level of tax compliance. As described below, the risk assessment takes into account a range of indicators, including but not limited to the taxpayer’s history of compliance.

All large-business taxpayers will be subject to audit every year, but compliance approaches will be tailored to each taxpayer and will vary from full-scope audits to limited compliance assurance reviews, depending on the taxpayer’s risk assessment. Risk ratings by the local tax services office (TSO) will be calibrated at the regional level to ensure consistency and accuracy within the region, and will then be further calibrated at the national level to ensure national accuracy, consistency, and quality.

The risk-based audit approach is being phased in over a five-year period (commencing in 2010-11) during which the CRA expects to contact all Canadian large-business taxpayers. As part of the initiation of its risk-based approach, the CRA began meeting with senior representatives of large-business taxpayers for the purpose of explaining its new approach to large-business compliance, providing the particular taxpayer with the results of the CRA’s risk assessment, and understanding how the taxpayer manages tax risk at its highest governance levels.

With regard to the risk-assessment process, each taxpayer will be assessed annually on the basis of the latest information available to the CRA. The CRA has indicated

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15 These details about the operation of the program were provided by the CRA at a meeting organized by the Tax Executives Institute in December 2012; see “Tax Executives Institute Meeting with CRA,” December 4, 2012, response to question 7 (www.tei.org/news/SiteAssets/Pages/2012-Canadian-Liaison-Meetings/2012_CRA_Responses_Income_Tax.pdf).
16 Ibid., response to question 12.
that once the five-year phase-in period is complete, it will consider revisiting taxpayers to review their rating. A taxpayer’s risk assessment will be based on several techniques, including

- analysis of historical audit results and behavioural patterns;
- review of the risk analysis provided by the taxpayer’s TSO, along with other relevant information (including effective tax rate analysis comparing rates for large-business taxpayers with average rates within their industry); and
- a determination of whether the taxpayer may be participating in tax-planning schemes.

The following risk factors will also be given consideration:

- Audit history;
- Industry sector issues;
- Unusual and/or complex transactions;
- Corporate structure;
- Major acquisitions and disposals;
- International transactions;
- Corporate governance;
- Participation in aggressive tax planning; and
- Openness and transparency.18

The CRA noted, in particular, that the lack of a formal method of identifying and responding to corporate tax risk (that is, tax governance), in the absence of other mitigating controls, will weigh against the taxpayer in the risk-assessment process.19

According to the CRA, taxpayers can reduce the cost of a CRA audit by embracing the new approach to large-business compliance—specifically, by establishing good corporate governance principles related to tax decisions and by freely, openly, and frankly sharing information with the CRA (the enhanced relationship).20 The CRA has listed the following examples of approaches available to taxpayers to prevent audit disputes:

- Establishment of clear corporate governance frameworks that ensure all tax risks are properly identified and addressed on a timely basis.
- A good governance approach may include:
  - A sound framework to manage tax risks and comply with tax obligations
  - A strong in-house tax capability
  - Reporting requirements that ensure that significant tax risks are elevated to decision makers such as the CFO, CEO, the Board or its Audit Committee

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18 Ibid.
19 Supra note 15, response to question 12.
20 See “CRA/TEI Liaison Meeting,” December 7, 2010, responses to questions 1(a) and (d); see www.tei.org/news/Pages/TEICRA2010IncomeTaxLiaisonMeeting.aspx.
o Appropriate review and sign off procedures for material transactions
o An effective tax risk mitigation capability including the business’s relationship with the applicable tax jurisdictions
o Capacity to regularly evaluate the effectiveness of tax governance systems

■ Meeting the CRA on a regular basis to openly discuss tax management strategies adopted by businesses.
■ Ensuring clear and accurate documentation is readily available and shared with CRA to fully explain differences between accounting and taxable income as well as other business issues.
■ Informing CRA on a timely basis of changes undertaken to the business (e.g. acquisitions, mergers, new foreign affiliates, new/different transfer pricing transactions, etc.).
■ Soliciting CRA’s opinion regarding the tax treatment of risky transactions through meetings with the LFCM [Large File Case Manager] or by seeking Advance Pricing Arrangements or Rulings.
■ Responding to CRA’s questions openly and in a timely manner including making available to CRA on timely basis foreign based documentation.21

Real-time audits will act as a complement to this new approach. In addition, the action of informing the CRA of contentious tax issues in advance and a willingness to cooperate with the CRA in an open and transparent manner will be taken into consideration, along with other risk factors, in determining the taxpayer’s risk category.22

Finally, the CRA is undertaking a detailed analysis, which will continue throughout the five-year phase-in period, to determine whether there is a correlation between the risk rating assigned to a file and the actual results of the audit, and to ensure the consistency of the application of the criteria for the program.23

While the new risk-based approach involves transparency on both sides,24 few details have been released regarding how the CRA intends to improve its own transparency, apart from notifying large-business taxpayers of their risk rating and disclosing the factors that contributed to that rating.

To date, there is no formal CRA publication outlining the CRA’s risk-based approach to audits. There is also, at this time, no formal administrative process by which a taxpayer can dispute its risk-assessment rating. Presumably, without any such administrative process, a taxpayer could seek judicial review of the CRA’s determination of its rating in the Federal Court of Canada.25 Clearly, if things get to that point, an enhanced relationship has broken down.

21 Ibid.
22 Ibid.
23 Supra note 17.
Preparing for a Meeting with the CRA

Reasonable suggestions have been made that taxpayers should provide good explanations of their organization’s tax compliance and be able to address the relevant factors identified by the CRA to explain why the organization deserves a lower risk rating. Supporting documentation should be available, and the representative should demonstrate an understanding of any tax risks that the corporation is undertaking. Such materials may include any internal risk assessments, identification of outside tax and legal advisers, and a description of the types of major transactions that the organization undertakes, as well as their frequency. Knowing which transactions may invoke CRA scrutiny, maintaining a good tax analysis of those transactions, and preparing a clear and concise explanation for the CRA should be helpful.26

While a taxpayer is required to provide information to the CRA that is related to the administration and enforcement of the Income Tax Act,27 there is no legal obligation for taxpayers to identify uncertain tax positions (UTPs) to the CRA.

The CRA has identified 12 topics that will help prepare corporate officials for its discussion on corporate governance to manage tax risk.28 These can be summarized as follows.

1. **internal tax function**: details regarding the corporation’s internal tax function, including the number of staff, and their roles and responsibilities
2. **framework for identifying and assessing tax risks**: details of any formal framework for identifying and assessing the major tax risks associated with normal ongoing operations, and of steps taken to address material risks, along with details about the individuals who oversee tax-risk management
3. **tax-risk reviews**: extent and frequency of tax-risk reviews
4. **involvement of directors and senior management in tax matters**: a summary of the tax matters that the board of directors and senior management get involved in
5. **tax intermediaries**: use of tax intermediaries and the extent of their involvement in tax-risk management
6. **monitoring of non-compliance risk**: how the taxpayer monitors the risk of non-compliance and what steps are taken when a potential issue is identified
7. **systems and processes**: what systems and processes exist to ensure that data and information for tax purposes are accurate, reliable, and maintained in accordance with the legislation and with CRA policy
8. **external tax advisers**: details regarding the use of external advisers for tax planning and fee arrangements for this work (for example, payment on a contingency basis)

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27 RSC 1985, c. 1 (5th Supp.), as amended.

28 Taken from a standard form letter sent by the CRA to large-business taxpayers with respect to meeting to discuss the new risk-based audit approach.
9. *tax strategy*: consistency of the corporation’s tax strategy with the overall business strategy

10. *risk-management committee*: details of any risk-management committee, including its members, their roles, and whether the CRA can access minutes of the meetings

11. *top five tax priorities*: the corporation’s top five priorities with respect to tax risk

12. *other information*: an open discussion of any other information regarding tax risk that the taxpayer believes is relevant to the CRA’s understanding of the business and its risk assessment

**Preassessment Review of Large Corporations’ Tax Returns**

The CRA has recently begun reviewing T2 returns filed by large corporations prior to the issuance of an initial assessment. Although this review is not a regular audit, the requests for information from the CRA can be extensive and may include the following:

- an explanation as to why the depreciation of assets or the additions or deductions to the reserves reported on schedule 1 (net income/loss for income tax purposes) do not reconcile with amounts reported on the general index of financial information or the amounts reported on the taxpayer’s financial statements;
- a detailed breakdown of all lines included on schedule 1; and
- a revised schedule 8 (capital cost allowance) because the capital cost allowance claimed in certain classes appears to exceed the permitted rates and recapture information is incomplete.

According to the CRA, preassessment reviews are consistent with its move toward audit currency, and they provide the CRA with a more accurate risk assessment of the subject taxpayer. Such detailed requests are generally made by the large-file case manager, while automatic adjustments to filed returns (adjusting carryover balances, for example) resulting in the issuance of an initial assessment that differs from the return filed by the taxpayer are generated by the CRA’s initial assessing systems.

Goods and services tax registrants are also subject to enhanced preassessment reviews designed to assist the CRA in identifying high-risk cases. Such reviews may include requests for further information and documents regarding revenue sources and input tax credits claimed.

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29 Supra note 15, response to question 6.

Reportable Transaction Rules

New reportable transaction rules have recently been enacted in section 237.3 of the Act. An in-depth analysis of the rules is beyond the scope of this article. For our purposes, it is sufficient to summarize the reportable transaction rules as generally being triggered where two of three hallmarks contained in the definition of “reportable transaction” in new subsection 237.3(1) are present. These hallmarks reflect characteristics of certain aggressive tax-avoidance transactions, including contingency fees, contractual protection for the taxpayer with respect to the expected tax benefit, and confidential protection prohibiting any disclosure of the details of the transactions.

It is noteworthy that the failure of similar reportable transaction initiatives undertaken in the United States led to the implementation of the current filing requirements related to UTPs (discussed in a later section of this article). This is confirmation of the fact that tax authorities are monitoring the effectiveness of measures targeted at aggressive tax planning and may well pursue further initiatives where previous measures are considered ineffective.

Joint Audits with Foreign Tax Authorities

Another audit initiative of the CRA is to conduct joint audits with foreign tax authorities. According to the OECD, a joint audit represents a new form of coordinated action between tax administrations and involves the following:

- two or more countries joining together to form a single audit team to examine an issue(s)/transaction(s) of one or more related taxable persons (both legal entities and individuals) with cross-border business activities, perhaps including cross-border transactions involving related affiliated companies organized in the participating countries and in which the countries have a common or complementary interest;
- the taxpayer jointly makes presentations and shares information with the countries; and
- the joint audit team will include Competent Authority representatives, joint audit team leaders and examiners from each country.

The OECD has stated that joint audits should result in quicker issue resolution, more streamlined fact finding, and more effective compliance. Joint audits would also have the potential to shorten examination processes and reduce costs, both for revenue authorities and for taxpayers.

One of the goals of joint audits is to anticipate and resolve areas of potential audit disagreement by avoiding them in the first place, particularly in the area of transfer pricing.

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33 Ibid., at 2.
The CRA’s position is that a joint audit is a collaborative process in which tax authorities and the taxpayer should form a common understanding of the taxpayer’s circumstances, interpretations of transactions, and the significance and sufficiency of documentation. A joint audit is not an advance pricing agreement (though one could result from a joint audit) or a mutual agreement procedure under a tax treaty.34

The CRA is currently conducting a joint audit pilot project with the US Internal Revenue Service (IRS). One objective when performing such audits is to have the taxpayer and the tax authorities review, discuss, and agree to a transfer-pricing methodology, and memorialize any agreement with respect to transfer-pricing methodology for the audit years.

**CONTEXTUAL CONSIDERATIONS**

An essential recommendation of this article is that Canadian corporations should aim to align their participation in tax transparency initiatives with their best interests. This is consistent with the suggestion that reviews of corporate governance policies should be more than simply reactive.

However, we are not so naive as to suggest that Canadian corporations can entirely control the process. In fact they cannot. As already described, most of the CRA’s tax transparency initiatives impose compliance obligations.

In addition, there is a wider context. That context can be divided into three distinct areas: OECD initiatives, transparency initiatives adopted by other countries, and the political context. These are discussed in more detail below.

**OECD INITIATIVES**

As noted, the OECD has been a significant advocate of international tax transparency and has promoted the exchange of information between tax authorities for some time. There are various ongoing OECD initiatives that fall under the rubric of tax transparency.

In 2001, the OECD established the Global Forum on Tax Transparency and Exchange of Information for Tax Purposes. This organization has grown to include 116 member jurisdictions, the European Union, and 12 international organizations as observers. The global forum’s mandate is to ensure that all jurisdictions adhere to the same high standard of international cooperation in tax matters, the terms of which are set down in its terms of reference.35 The global forum conducts peer reviews of its member jurisdictions’ laws and practices with respect to the exchange of information with other tax administrations.

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In 2002, the OECD produced the Agreement on Exchange of Information on Tax Matters. This document is the template for hundreds of tax information exchange agreements (TIEAs) that have been entered into between countries around the world, pursuant to which information is shared between tax authorities. Confidentiality provisions with respect to information that is exchanged are also included in the OECD’s model TIEA.

In 2008, the OECD published the Study into the Role of Tax Intermediaries, which discusses how an enhanced relationship between tax authorities and taxpayers can result in a decreased demand for aggressive tax planning and how tax authorities that assess taxpayers’ compliance risk can more efficiently allocate their audit resources. For example, the study explains that while tax intermediaries (tax advisers) develop aggressive tax plans for their clients, it is the taxpayers who decide whether to implement such plans. Accordingly, taxpayers represent the “demand side of aggressive tax planning” while tax intermediaries represent the “supply side of aggressive tax planning.” In sum, “[i]f the demand can be reduced, the supply of aggressive tax planning would also fall.” To persuade taxpayers to enter into this relationship, the study suggests a carrot and stick approach, noting that taxpayers who opt to disclose to the tax authorities only information that is required by law risk a higher risk-assessment rating and thus higher audit compliance costs. At the same time, the study urges tax authorities to assist taxpayers that do participate in the enhanced relationship by offering earlier disclosure and resolution of tax issues (through rulings or otherwise), preferably in real time.

The study also provides an outline of the OECD’s recommendations for the establishment of an enhanced relationship between tax authorities and taxpayers and for risk-assessment procedures (using similar factors to those now cited by the CRA with respect to its risk-based audit program). For example, the study notes that

[a] key theme from consultations was a demand that, in order for taxpayers to provide this level of [enhanced] disclosure, revenue bodies should provide detailed rules on their requirements. The Study Team does not share this view and believes that a relationship based on trust and openness cannot be based on detailed rules; it must be based on broad principles. Countries with initiatives based on enhanced relationship concepts . . . have not used rules-based frameworks but have left the parties to establish the appropriate level of disclosure.
Other suggestions include the following mechanisms that may assist in building the enhanced relationship:

- **A unilateral statement or declaration by the revenue body setting out how it intends to work.**\(^{42}\) This would include what the revenue body asks of taxpayers and tax advisers, and the consequences for them if they do not provide what is asked for. It would then be for taxpayers to decide how to respond.

- **A charter adopted jointly by or on behalf of all stakeholders setting out how all participants intend to work together.**\(^{43}\) This would include what all the participants—the revenue body, taxpayers, and tax advisers—are expected to do and the consequences for each of them if they do not meet those expectations.

- **A formal or informal agreement between the revenue body and a specific taxpayer.** Each agreement could be tailored to suit the specific needs of the particular taxpayer. The agreement could specify how the revenue body and the taxpayer intend to work together and how the agreement could be terminated.

In 2009, the Group of Twenty (G20) affirmed their commitment to tax transparency, stating:

We stand ready to take agreed action against those jurisdictions which do not meet international standards in relation to tax transparency.\(^{44}\)

[We agree . . . to take action against non-cooperative jurisdictions, including tax havens. . . . We note that the OECD has today published a list of countries assessed by the Global Forum against the international standard for exchange of tax information.\(^{45}\)]

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42 As noted ibid., at 46, footnote 3, “Switzerland has a ‘Code of Conduct for Tax Authorities, Taxpayers and Tax Advisers’ [sic]. This code of conduct provides a very basic list of ‘dos’ and ‘don’ts’ which apply not only with respect to communications between tax advisors and the tax administration, but ultimately with respect to any citizen approaching an administrative authority. The Code of Conduct is supported by the Federal Tax Administration, by cantonal tax administration, and by the ‘Schweizerische Treuhandkammer.’ A copy of the code of conduct can be found at: [www.estv.admin.ch/dokumentation/00078/00733/index.html?lang=en]. In addition the Study Team also noted the 2006 draft code of conduct developed by KPMG’s Tax Business School which sets out to develop a ‘voluntary code of conduct focused around behaviours [to] help set the environment for trust. The [code] could regulate the behaviour of taxpayers, tax collectors and tax advisers and could be devised and regulated by that group.’ David F. Williams for KPMG’s Tax Business School, A Code of Conduct for Tax, October 2006, at 4.”

43 For example, this is broadly the approach used by the Netherlands in horizontal monitoring and by the United States in its compliance assurance program (CAP).


Since 2009, hundreds of TIEAs have been entered into by countries across the world and the OECD’s global forum has been active in conducting peer reviews of countries’ tax transparency laws and practices.\(^ {46}\) Other reported results of the global forum’s peer reviews are that, in response to the forum’s recommendations, member jurisdictions have introduced amendments to their laws that include the following:\(^ {47}\)

- the end of strict bank secrecy laws for tax purposes;
- the elimination of practices such as domestic tax interest requirements, which prevented effective exchange of information; and
- the elimination or immobilization of bearer shares in a number of countries, as well as the elimination of other non-transparent practices (such as failing to require that enterprises keep proper accounting records).

In addition to establishing guidelines for governments and tax administrations to achieve greater tax transparency, the OECD follows the various tax transparency initiatives that are being undertaken by tax administrations across the globe. It has summarized many of those initiatives in a recent report,\(^ {48}\) thereby keeping tax authorities informed about policies and strategies being pursued in other jurisdictions.

The reviews of countries’ tax transparency laws and practices undertaken by the OECD’s global forum have, to date, been evaluated on the basis of an information exchange upon request, as the international standard. The OECD prepared a report for the Group of Eight (G8) summit in June 2013, analyzing how nations might implement a new automatic exchange standard in a multilateral context.\(^ {49}\) On June 18, 2013, the G8 agreed to commit to the establishment of the automatic exchange of information between tax authorities as the new global standard, and to work with the OECD to develop a multilateral model to implement this standard.\(^ {50}\)

\(^{46}\) The OECD publishes each countries’ review results online: www.oecd.org/tax/transparency.


\(^{50}\) G8, “Lough Erne Declaration,” 2013 Lough Erne Summit, Lough Erne, Northern Ireland, United Kingdom, June 18, 2013 (www.g8.utoronto.ca/summit/2013lougherne/lough-erne-declaration.html).
TAX TRANSPARENCY INITIATIVES IN OTHER JURISDICTIONS

A variety of tax transparency initiatives have been adopted in other jurisdictions. Below we provide a few examples of initiatives introduced by the respective tax administrations of the United States, the United Kingdom, and Australia.

The success or failure of such initiatives is monitored by other OECD nations, including Canada.

United States—Uncertain Tax Positions

A UTP is, generally, an item for which the tax treatment is unclear or is a matter of dispute between the taxpayer and the tax authority. A UTP may be recorded in a taxpayer's financial statements as a current or deferred tax asset or liability, depending on the circumstances (such as whether the UTP affects the cost base of an asset) and depending on the applicable accounting standards followed by the taxpayer.

The United States now requires certain taxpayers with $50 million in assets (reduced to $10 million in assets as of 2014) to file form 1120 (known as “schedule UTP”) with their US income tax return listing their UTPs in circumstances where the taxpayer or a related person has recorded a reserve in its audited financial statements with respect to such position or expects to litigate a tax position. Schedule UTP does not require that any amount with respect to the UTP be disclosed, but it does require that UTPs be ranked in order of size and that a brief description of the tax position, relevant facts, relevant statutory provisions, and information describing the nature of the issue be provided.

The IRS has provided some comfort to taxpayers that it generally will not assert that privilege has been waived by a taxpayer where an otherwise privileged document has been provided by the taxpayer to its independent auditor for purposes of assisting the auditor in determining the adequacy of the reserves for contingent tax liabilities recorded in the taxpayer’s audited financial statements. The IRS has also assured taxpayers that it will not routinely share information reported on schedule UTP with other foreign tax authorities; however, such information sharing may be required where a reciprocal arrangement with the foreign tax authority applies and where such information is relevant for the foreign tax authority. In the IRS’s view, the latter factors would not be present in many cases.

The IRS has released statistics for the first two years of schedule UTP filing, and the numbers indicate that 1,677 taxpayers (out of more than 5,000 public corporations) reported an average of 2.5 positions per schedule UTP filed with respect to the 2011 taxation year. This indicates that the majority of large US corporations did not file schedule UTP on the basis that they did not have any UTPs to report.

51 See IRS Announcement 2010-76, 2010-41 IRB 432.
52 See IRS Announcement 2010-75, 2010-41 IRB 428.
United Kingdom—Senior Accounting Officer Certification

As previously mentioned, the United Kingdom has introduced regulations requiring the SAO of certain large qualifying companies to certify annually that he or she has established and monitored accounting arrangements capable of supporting accurate tax returns across all major taxes. Penalties may be assessed to both the company and the SAO personally for non-compliance.

Very generally, a qualifying company must be incorporated in the United Kingdom in accordance with the Companies Act 2006 and must exceed a particular turnover and/or balance sheet total amount (generally, a turnover amount of more than £200 million and a balance sheet total of more than £2 billion) for the preceding financial year. Where a company is a member of a group, the responsible officers must aggregate the company’s turnover and/or balance sheet totals with those of other UK incorporated companies in the same group to determine whether it is a qualifying company.

An SAO is the director or officer of a company who, in the company’s reasonable opinion, has overall responsibility for the company’s financial accounting arrangements. Each qualifying company must identify its SAO.

The SAO must carry out a main duty to ensure that the company establishes and maintains appropriate tax accounting arrangements to allow tax liabilities to be calculated accurately in all material respects. The SAO must also file with HM Revenue & Customs (HMRC) a certificate for a financial year stating whether the company had appropriate tax accounting arrangements. If the company did not have appropriate tax accounting arrangements, the SAO must explain what the shortcomings were.

A penalty may be imposed

- on a qualifying company if it fails to notify HMRC of the name of its SAO;
- on the SAO if he or she fails to meet his or her main duty (though a defence is available if the SAO has a reasonable excuse); or
- on the SAO if he or she fails to give HMRC a certificate within the required time, or if he or she provides a certificate that contains a careless or deliberate inaccuracy.

The United Kingdom has also imposed a risk-based approach to tax audits, which the SAO provisions complement by virtue of their focus on making a company’s tax-risk management a continuously important issue at the senior management level.

HMRC has stated that the requirement that the SAO take reasonable steps to ensure that the company establishes and maintains appropriate tax accounting arrangements will in general

54 See supra note 12.
55 (UK), 2006, c. 46.
involve the SAO having in place mechanisms for identifying, on an ongoing basis, the risks which might result in the tax returns not being accurate in all material respects and ensuring that processes and controls are in place for managing and monitoring these risks.56

HRMC has also stated:

We expect CRMs [customer relationship managers] to continue to discuss what the SAO is doing to discharge their responsibilities as part of maintaining their understanding of the business and carrying out the Business Risk Review. These discussions might include:

- How the business has identified and managed any significant tax risks arising from a particular major business or legislative change;
- The process the business has for ensuring the sensitive decisions taken outside the tax function are consistent with the organisation’s tax policy;
- How the tax policy is communicated throughout the organisation and how adherence to this is monitored.57

Consequently, the SAO regulations are one more initiative being pursued to enhance taxpayer transparency to the revenue authority, to raise the importance of tax-risk management on the corporate governance agenda, and ultimately to change the corporate culture and attitude with respect to tax-risk management.

Australia—Publication of Tax Paid by Large Corporations

Australia recently announced and enacted a statutory requirement that otherwise private tax information of large corporations be published for public viewing. Specifically, the name, business number, total income, taxable income, and tax payable of any corporate tax entity with total income of A$100 million or more, or with any minerals resource rent tax or petroleum resource rent tax, is now required to be published.58 The stated objective of this proposal is to enable the public to better understand the corporate tax system and engage in tax policy debates, as well as to discourage aggressive tax-minimization practices by large corporate entities.59

57 Ibid.
58 See sections 3C, 3D, and 3E of the Taxation Administration Act 1953, No. 1, 1953, as amended.
In response to this proposal, the Tax Institute has stated:

The Assistant Treasurer’s media release of 4 February 2013 notes that transparency will “allow the public to better understand the business tax system and engage in debates about tax policy.”

However, the tax system is complex and contains a multitude of bespoke tax treatments and concessions that have been specifically developed over time in conjunction with Government policy.

There is a high risk that the disclosed information will result in misunderstanding, especially without the necessary context about the business tax system and the particular facts and circumstances of the company. That is, the proposed disclosures risk causing widespread confusion rather than illumination, ultimately detracting from the objective of tax transparency.60

The Tax Institute also noted that it is our view that an appropriate rate of taxation can only be imposed on such profits via well-conceived and drafted tax laws, and in conjunction with our international treaty and trading partners. That is, a taxpayer’s obligation to pay their “fair share” of tax in Australia cannot be imposed via any means other than clearly defined laws, as made by the Australian Government. Taxpayer obligations should begin and end with compliance with the tax law.

We concur with the view that our taxation laws should reflect the values of the taxpaying community. As such, we welcome an informed debate about the appropriateness of current tax settings as well as the merits of any changes to our tax system being considered.

Transparency as to the tax affairs of certain taxpayers may assist in informing such a debate—if the information is meaningful, relevant and explained and debated in context.61

Despite these concerns, the Australian Parliament moved swiftly to introduce this initiative and to enact it as law.62

**Political Context**

As previously noted, arguments about corporate responsibility and even morality have accompanied calls for improved tax transparency in certain public interest and political spheres. Underlying the public pressure is the contention that aggressive tax-avoidance planning is pervasive among corporations.

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61 Ibid., at 1.

In the United Kingdom, a number of tax-avoidance practices have been highlighted by public interest groups as being particularly egregious, and there is at least some evidence of reputational damage suffered as a result of public pressure. There seems to be little doubt that corporations are paying more attention to tax transparency initiatives, both from a corporate governance perspective and from a public relations perspective.

In response to public and political pressure, Starbucks UK announced in late 2012 that it would decline to claim available deductions for certain intercompany charges in 2013 and 2014 and would make a $16 million payment to HMRC in each of the next two years, over and above its lawful corporate tax liability.  

The very effort to place responsibility for tax-risk analysis on higher-level corporate managers is based on the view of tax authorities that such management-level responsibility will necessarily cause corporations to become more circumspect and less prone to engage in off-the-shelf tax-avoidance planning.

Some reactions to efforts to curb aggressive tax-avoidance planning through tax transparency initiatives reveal underlying tensions between corporations and tax authorities, with some commentators pointing to the importance of the rule of law in governing the relationship between taxpayers and tax authorities.  

There has been no suggestion in the extensive media coverage of the Starbucks matter that the company avoided the lawful determination of its tax liability. It is noteworthy that the United Kingdom is in the throes of public debate related to the introduction of a general anti-avoidance provision.

It is important to note that in Canada there are numerous examples of situations where the CRA has argued that corporate taxpayers have engaged in abusive tax avoidance and the courts have disagreed. As the Supreme Court of Canada observed in its recent decision in Copthorne,

> [t]he most difficult issue in this case is whether the avoidance transaction was an abuse or misuse of the Act. The terms “abuse” or “misuse” might be viewed as implying moral opprobrium regarding the actions of a taxpayer to minimize tax liability utilizing the provisions of the Income Tax Act in a creative way. That would be inappropriate. Taxpayers are entitled to select courses of action or enter into transactions that will minimize their tax liability (see Duke of Westminster).

One might suggest that certain elements of tax transparency equate to an attempt by tax authorities to make an end run around principles articulated in the *Duke of*

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65 *Copthorne Holdings Ltd. v. Canada*, 2011 SCC 63, at paragraph 65 (emphasis added).
Westminster decision. The Supreme Court of Canada has confirmed the legitimacy of such principles on a multitude of occasions. Recently, the Federal Court of Appeal held that allegations of egregious or repulsive conduct and assertions of immorality are not relevant to considerations of whether expense should be disallowed under the Act.

At the 2011 Canadian Tax Foundation annual conference, a CRA representative remarked that

[i]n the private sector, your objective is to try to minimize taxes for your client; in government, it is to make sure that, in our opinion, the right amount of tax is assessed. Those are two diametrically opposed views.

In this context it is not trite to point out that Canada values the rule of law and thus should not allow extraneous considerations to enter into the debate about the lawfulness of tax-planning initiatives. It is also correct to point out that the CRA should not adopt policies that introduce unacceptable levels of discretion, in a manner that is inconsistent with established legal principles. In the end, it is the legal amount of tax that is germane.

There is a tremendous amount of subjectivity involved in tax authorities’ concluding that the prevalence of unacceptable tax-avoidance schemes requires an extrajudicial administrative response based on considerations of what is the “right” amount of tax. Certainly one would expect that tax authorities would have their own views about the abusive nature of particular planning schemes. However, in the many GAAR cases that have come before the courts, the CRA’s views of abusive tax avoidance have not always carried the day.

Nevertheless, political debate in some circles would entirely dismiss the notion of legal compliance with tax obligations in favour of subjective notions of fair, per-country, taxation. Given the developments described above, political context needs to be kept in mind, and governance policies should look to ensure that corporations adopt practices that can withstand public scrutiny.

ESTABLISHING ENHANCED RELATIONSHIPS: OPPORTUNITIES AND OBSTACLES

Notwithstanding the international political context, it is important to realize that the CRA has a real interest in establishing enhanced and mutually beneficial relationships with Canadian corporations.

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68 Mar et al., supra note 24, at 3:2.
Yet there are real challenges for Canadian corporations in deciding to enter into an enhanced relationship. Even in the case of corporations that adopt governance practices that are consistent with the CRA’s recommendations, there is no assurance of receiving broad levels of reciprocal benefits.

Beyond the savings that low-risk corporations might realize from limited compliance reviews, current CRA practices suggest that there are limited benefits that can result from an enhanced relationship. We note the following points:

- There have been no announcements of new practices adopted to ensure expeditious review of transactions that involve an element of uncertainty and that are brought forward on a voluntary basis.
- There have been no announcements of changes to the CRA’s rulings processes that would apply to low-risk taxpayers.
- There continue to be a large number of open tax years for Canadian corporations relating to unresolved audits or disputes, and no announcements of CRA practices that would seek to address this issue for low-risk taxpayers.
- The CRA has not made a meaningful commitment to discussions about alternative dispute resolution procedures, even though the implementation of such procedures could serve to reduce the number of active appeals before the Tax Court and thereby allow the CRA to focus on speedier resolution of significant disputes.
- The CRA has not yet, in any substantive way, adopted real-time audit practices even for low-risk corporations.

Moreover, as regards the CRA’s practice of measuring “tax earned by auditor” (TEBA), the Tax Executives Institute (TEI) at its 2011 TEI-CRA liaison meeting pointed out that

> [O]rganizational behaviour theory posits that the behaviour of individuals and groups is strongly influenced by the metrics used to measure performance. In other words, “you get what you measure.” TEBA is a metric used by CRA to evaluate and allocate audit resources to individual Tax Services Offices (TSOs), TEI questions whether TEBA is an appropriate metric to motivate auditors and TSOs to perform in the best interests of the Agency.\(^{70}\)

In response, the CRA stated:

> TEBA, is only one component of the overall measurement framework used to evaluate taxpayers’ compliance rate, as well as the performance of the Audit program in the Agency. No individual quotas are assigned to any auditor.\(^{71}\)

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\(^{70}\) Supra note 17, at question 8.

\(^{71}\) Ibid., response to question 8.
However, despite the CRA’s insistence that its auditors are not assigned any TEBA quota, skepticism in the minds of tax practitioners appears to persist.72 It is also noteworthy that other international jurisdictions have adopted enhanced relationship programs with a broader range of benefits. Recently, questions have been raised as to the availability of government resources to ensure the success of their programs. In the United Kingdom, it has been suggested that if an enhanced relationship program were to be adopted that merely required taxpayers to devote more resources to make disclosures, with little added benefit, it is unlikely that the program would work.73

CONCLUSIONS

If “tax governance” can be viewed as corporate governance related to tax, it is clear that corporations should review their tax governance processes to ensure that they focus on actively managing tax-risk items. Certainly, this goes beyond the types of frameworks and controls that ensure that reporting is accurate and that filings and elections are made on a timely basis.

Keeping in mind the current political context, corporations need to be concerned about managing tax risks not simply because of the potential financial implications in the event of significant tax reassessments, but also because of the potential reputational risks. Addressing these concerns is a multifaceted effort, requiring better communications between tax functions, business functions, legal functions, and even public relations functions. The processes should ensure that such communications are brought before the board and senior management, so that appropriate decisions can be made as to the management of risk.

However, decisions about management of risk should also be informed by the true legal reasons for the tax risks in the first place. Are the risks related to unclear interpretation of statutory provisions? What are the policy reasons underlying the provisions in issue that have led to tax benefits? Can the CRA be shown to be taking an assessment position that is inconsistent with public policy objectives, or even with the case law? Overall, there is often more to the story than might be gleaned from allegations of aggressive tax planning.

Corporations should be prepared to point out, if necessary, that responding to tax risks and managing tax risks can often be frustrated by inordinately long delays in obtaining assurance from the CRA as to transactions with uncertain tax consequences. In addition, a strained dispute resolution process often hampers the expeditious management and resolution of legitimate UTPs.

72 See Mar et al., supra note 24.
Corporations should also strive to ensure that the CRA has a clear understanding of their business functions and corporate objectives. To this end, they should take steps toward an enhanced relationship with the CRA. To the extent that corporations choose to voluntarily disclose uncertain or risky items to the CRA, they should do so on the explicit understanding that the CRA will agree to quickly take a position on the matter and agree to be bound by a favourable ruling, or otherwise will agree to the expeditious resolution of any disputes flowing from the disclosure.

To the extent that Canadian corporations must be more vigilant in anticipating reputational issues related to tax, they will be assisted by

- documented governance processes related to tax-risk management,
- implementation of controls that allow for full consideration of all facts and legal considerations,
- documented efforts to expeditiously resolve disputes that they have undertaken, and
- in some circumstances, a well-developed public relations and communications strategy on matters relating to taxes.

However, what is more important to the effective administration of the Canadian tax system is that large corporations and the CRA work diligently and in good faith toward developing and maintaining mutually beneficial enhanced relationships. A strict focus on reputational issues related to tax will simply not produce the benefits that are achievable through enhanced relationships. Reduced levels of off-the-shelf planning may indeed result, but it is doubtful that the goals of a more efficient allocation of audit resources and the collection of higher levels of tax revenue will be realized.