

The Income Tax Rulings Process: Dispelling the Mystery

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PRÉCIS

Cet article aborde principalement la question du processus de prise de décision de Revenu Canada en matière d'impôt sur le revenu, tant du point de vue interne qu'externe. L'article vise deux objectifs :

- procurer des renseignements qui sont parfois difficiles à obtenir afin d'aider les contribuables et leurs conseillers à déterminer s'il leur serait avantageux de recourir aux services de la Direction des décisions; et
- évaluer le processus de prise de décisions en matière d'impôt sur le revenu et recommander des modifications qui permettraient à la Direction de mieux servir les besoins des contribuables tout en favorisant l'accomplissement du mandat de Revenu Canada.

Le processus de prise de décision et les autres services offerts par la Direction (interprétations et publications techniques) sont expliqués en détail dans l'article. Les auteurs en arrivent à la conclusion que la Direction rend un service précieux au milieu canadien des affaires et qu'il le fait de façon professionnelle. Les auteurs proposent diverses modifications, entre autres, l'introduction de frais variables pour le service des décisions, l'établissement de normes de service et l'extension des services de la Direction à d'autres genres d'opérations.

Selon les auteurs, la mise en oeuvre d'un grand nombre des recommandations ne nécessiterait qu'une légère augmentation des ressources actuelles de la Direction. Un plan a été élaboré qui réduirait considérablement les délais reliés aux processus de prise de décisions et, en supposant un accroissement du volume de décisions, n'entraînerait pas de frais supplémentaires pour le gouvernement.

ABSTRACT

This article primarily reviews Revenue Canada's income tax rulings process from both an internal and an external perspective. The objective of the article is twofold:

- to provide information that might not otherwise be available to assist taxpayers and their advisers in determining whether the services of the Income Tax Rulings Directorate could be of benefit to them; and

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- to evaluate the income tax rulings process and recommend changes that would enable the directorate to better service taxpayer needs and at the same time promote achievement of Revenue Canada's mission.

The article explains, in some detail, the rulings process and the other services of the directorate (technical interpretations and technical publications). The authors conclude that the directorate provides a valuable service to the Canadian business community and that it does so in a professional manner. The authors suggest a number of changes, including the introduction of a flexible fee for the rulings service, the establishment of service standards, and expansion of the directorate's services to other types of transactions.

Many of the recommendations, in the authors' view, could be implemented with a modest increase in the directorate's current resources. Given an increase in resources, the directorate plans to consider the introduction of more formal service standards. The directorate anticipates that this change, combined with the benefits of an ISO 9000 process review, would accomplish a substantial improvement in the ruling processing time and, assuming increased rulings volume, would not result in additional costs to the government.

INTRODUCTION

The purpose of this article is to describe the current rulings process at Revenue Canada and to describe our experience with the process in terms of what works well and what, in our view, could be improved. Our experience comes both from our dealings with the directorate and from work experience within the directorate in various capacities over a number of years. We also briefly describe and comment on the other services that the directorate provides.

It is our observation that while most accounting and legal firms are aware of the directorate, many taxpayers and their advisers¹ have very few dealings with the directorate. The main reasons for this, in our view, are the following:

- they may not feel that the directorate has anything to offer them in terms of added value;
- they are not familiar with the services or products of the directorate;
- they are not familiar with the procedures (that is, whom to call, how to request and apply for a ruling or interpretation, etc.); and
- they are concerned about timeliness of service.

¹ Taxpayers can submit rulings directly or have their representatives submit the ruling on their behalf. In most cases, rulings are submitted by taxpayer representatives. In this article, we will refer to "taxpayers" and "representatives" interchangeably.

Whatever the reason for not dealing with the directorate, it is our view that many taxpayers simply do not have all the information they need in order to assess whether the directorate can be of benefit to them in providing either a ruling or technical advice. It is hoped, therefore, that this article will provide some insight into the operations of the directorate, and particularly the rulings process, so that taxpayers can more effectively evaluate whether the directorate's services can be of use to them.

It is our view that, given taxpayer demands, the complexity of today's business transactions, and the volume of the directorate's workload, the directorate in general does a very good job of fulfilling its mandate and provides a valuable service to the business community. It is without doubt the centre of technical expertise within Revenue Canada. That said, we consider that there is room for improvement. The quality and timeliness of service are not consistent throughout the directorate. No clear standards of service are in place, and timeliness is of particular concern. We provide some recommendations for changes that, in our view, would help to overcome these difficulties.

DESCRIPTION AND MAKEUP OF THE DIRECTORATE

With the issuance of *Information Circular 70-6* on September 14, 1970, Revenue Canada established the advance rulings function. It was recognized at that time that, owing to the increasing complexity of income tax law and of business transactions, a formal procedure should be adopted whereby a taxpayer could receive assurance before entering into a transaction that the tax law would be interpreted in a certain manner with respect to the facts of the particular case. The rulings process formalized the previous practice of providing non-binding opinions when taxpayers made representations on important business transactions.²

The Rulings Directorate today is an area within the Policy and Legislation Branch at Revenue Canada headquarters in Ottawa. It is made up of approximately 90 accountants and lawyers working in the following four divisions:

- 1) the Reorganizations and International Division,
- 2) the Financial Industries Division,
- 3) the Resources, Partnerships and Trusts Division, and
- 4) the Business and Publications Division.

The majority of professional staff are accountants, who are more or less evenly split among chartered accountants, certified general accountants, and certified management accountants. A smaller group of professional staff are lawyers. The makeup and size of the directorate are heavily

² Although the process was formalized, the rulings service remained administrative in nature and not a legislatively mandated process as recommended in the Carter report: see Canada, *Report of the Royal Commission on Taxation*, vol. 5 (Ottawa: Queen's Printer, 1966) (the Carter report), 138-39.

influenced by funding constraints. Over the past few years, practitioners have recommended in various public forums that more resources be devoted to the rulings service. It appears that highly experienced staff have departed recently.

There are 18 work sections in the four divisions, each specializing in a different area of tax law (see appendix 1 for an organization chart). A section chief³ heads each section, and each section employs four to six rulings officers.

The directorate's senior management team consists of a director general, who reports to the assistant deputy minister of the Policy and Legislation Branch, and four directors (one for each division), who report to the director general.

MANDATE OF THE RULINGS DIRECTORATE

The mandate of the directorate⁴ is

- to provide Revenue Canada's official interpretation of the Income Tax Act,⁵ the Income Tax Regulations, and related statutes;
- to establish Revenue Canada's interpretative policy relating to these statutes; and
- to disseminate to the public and other Revenue Canada personnel all advance income tax rulings and technical interpretations issued by the department, and all technical publications developed to fulfil Revenue Canada's role of promoting accuracy and consistency in the interpretation of the income tax law by its staff, and of fostering compliance with the law.

The directorate fulfils its mandate by offering the following services and products (listed more or less in order of importance to the directorate):

- advance income tax rulings;
- technical advice and guidance to tax services offices, other Revenue Canada headquarters areas, and other departments and governments;
- written and verbal technical interpretations;
- development of all interpretation (IT) bulletins, technical newsletters, and selected information circulars;
- specialized technical assistance to the Department of Finance on formulating or amending income tax legislation; and
- administration of Revenue Canada's income tax remission process.

³ We understand that most of the section chiefs have recently been renamed "managers." We will continue to refer to them as section chiefs in this article.

⁴ We understand this to be the mandate from our discussion with senior directorate officials.

⁵ RSC 1985, c. 1 (5th Supp.), as amended (herein referred to as "the Act"). Unless otherwise stated, statutory references in this article are to the Act.

The following table indicates the level of service provided during the 1997 fiscal year for each of the above activities.⁶

<i>Service provided</i>	<i>Files completed</i>
Advance income tax rulings	496
Written technical interpretations	1,464
Written advice to tax services offices	713
Other internal written advice	910
IT bulletins published	36
Technical newsletters published	4
Total written	3,623
Telephone inquiries answered	19,739

Although most of the above services will be described in this article, the discussion will focus mainly on the advance ruling process.

ADVANCE INCOME TAX RULINGS

The provision of advance income tax rulings has always been, and continues to be, the primary service of the directorate. Although the advice that the directorate provides to tax services offices during the course of an audit has recently grown in importance, advance rulings are still the first priority of the directorate over any other type of workload.

IC 70-6R3⁷ outlines the advance rulings process. Taxpayers or their representatives should review this circular in detail before requesting an advance income tax ruling.

What Is an Advance Income Tax Ruling?

An advance income tax ruling is a written statement given by the directorate to a taxpayer confirming how Revenue Canada will interpret and apply the income tax law to a proposed transaction or transactions that the taxpayer is seriously contemplating.

Purpose of Advance Income Tax Rulings

The purpose of advance income tax rulings is to promote voluntary compliance, uniformity, and self-assessment by providing taxpayers with certainty with respect to the tax implications of proposed transactions. This purpose is consistent with the mission of the department as a whole, which is⁸

to promote tax compliance with Canada's tax, trade and border legislation and regulations through education, quality service and responsible enforcement thereby contributing to the economic and social well-being of Canadians.

⁶ These data were presented by directorate officials to the Tax Executives Institute at the institute's 1997 annual meeting in Hull, Quebec.

⁷ *Information Circular 70-6R3*, "Advance Income Tax Rulings," December 30, 1996.

⁸ According to internal departmental documents.

The purpose of the rulings process is not to vet tax-planning ideas. For a ruling to be considered, there must be a bona fide business purpose for the proposed transaction, which can be identified and is sensible in the circumstances. Consequently, taxpayers must state in the ruling request the purpose of each proposed transaction.

Advance rulings are an administrative service that is provided to taxpayers in both the private and public sectors. There is no legal requirement to provide advance rulings; however, subject to various exceptions discussed below, all requests for advance rulings are considered.

There is no appeals process for an advance income tax ruling. The taxpayer must simply accept the position set out by the rulings officer. In the recent Federal Court—Trial Division decision in *Rothmans, Benson & Hedges v. MNR*,⁹ the court examined whether an advance ruling given by the Excise, Duties and Taxes Directorate of Revenue Canada (which is similar to an advance income tax ruling) was a reviewable decision. In order to be reviewable, an advance ruling would have to be considered a “decision” within the meaning of section 18.1 of the Federal Court Act,¹⁰ which it clearly is not.

Refusal To Rule

Although all ruling requests are considered by the directorate, rulings will not be provided in the following circumstances:¹¹

1) The transaction is the same in character as a completed transaction previously entered into by the taxpayer and the tax effect of the earlier transaction is under discussion with the taxpayer, in dispute, or under assessment or proposed assessment, but is not before the courts.

This exception is understandable since the directorate does not want to put itself in conflict with decisions being made at the field audit or appeals level.

2) The central issue involves a matter that is before the courts or, if a judgment has been issued, an appeal to a higher court is being considered.

This exception simply shows the proper respect for the judiciary.

3) The transaction is to be completed at some indefinite future time, or satisfactory evidence is lacking that a proposed transaction is being seriously contemplated.

We agree with this requirement. Without it, the rulings process would be unnecessarily cluttered. Also, the rulings function is not supposed to be the approval centre for tax-planning ideas. If it were, the rulings process would determine the limits of tax planning or acceptable tax avoidance,

⁹ Court file no. T-2393-97 (FCTD) (not yet reported).

¹⁰ RSC 1985, c. F-7, as amended.

¹¹ IC 70-6R3, *supra* footnote 7, at paragraph 15.

and each new technique would become a precedent and establish a norm. This result would be inconsistent with the purpose of the process, which is to provide certainty regarding the tax consequences of proposed bona fide business transactions. Therefore, rulings officers will generally ensure that there is a bona fide and realistic business purpose to a transaction before considering a request. Of course, this required business purpose must generally be present in any case to avoid application of the general anti-avoidance rule (GAAR).

4) The major issue is whether a transaction should be viewed as being of an income or of a capital nature.

Whether or not a transaction is on income or capital account is a question of fact, and such a determination can be made only by reviewing all the facts in the particular circumstances. Part of the income versus capital determination is, of course, based on the taxpayer's intent, which is difficult to assess at any time but relatively easier with the benefit of hindsight. Even so, in our view, a ruling could perhaps be given if all the facts were readily available and communicated to the rulings officer. If the facts turned out to be different from those disclosed, the ruling would simply be invalid as is the case for any other ruling where the facts turn out to be different from those initially disclosed.

5) A ruling would involve an interpretation of a provision of the Act that requires a regulation and the regulation has not been promulgated.

In this case, if the regulation is in draft form, a non-binding opinion should be attainable. This would apply equally to draft legislation.

6) The question concerns tax-related calculations (for example, the amount of refundable dividend tax on hand).

Most rulings are given on a conceptual basis without involving any calculations; a ruling on a butterfly is a good example.

7) A ruling involves a determination of fair market value of property or the ruling requires an opinion on generally accepted accounting principles (GAAP) or commercial practices.

Rulings officers provide interpretations of the income tax law and do not deal with determinations of value or opinions on GAAP.

8) A ruling is requested on a question of fact; however, a ruling may be provided if all the pertinent facts can be established at the time of the request.

We have obtained several rulings on questions of fact, but the onus was on us to establish clearly that there were enough facts present to support the ruling. These rulings are very difficult to obtain since, from the directorate's perspective, there is always a feeling that critical information may be missing. Given the purpose of the rulings process, which is to provide certainty with respect to the tax implications of proposed transactions, it should be somewhat easier to obtain these rulings in light of the directorate's policy that if the facts turn out to be materially different from those disclosed, the ruling is invalid.

9) An issue involves the interpretation of a foreign law.

Rulings officers are generally not sufficiently trained to give a ruling in this situation. In addition, the directorate would not be able to bind a foreign jurisdiction to that interpretation. However, rulings may be issued on certain aspects of the foreign affiliate provisions on the basis of opinions concerning the application of foreign law, but such opinions would then generally be considered facts of the ruling. Therefore, if such facts proved to be materially wrong, the ruling would be invalid.

Nature of a Ruling

An advance ruling can be favourable or unfavourable. Where the ruling is unfavourable, the taxpayer is given the opportunity to withdraw the ruling request. Since the relevant tax services office and taxation centre serving the taxpayer receive a copy of every ruling issued (favourable and unfavourable), most rulings that are unfavourable will be withdrawn by the taxpayer before being issued by the directorate. The directorate may nevertheless inform the tax services office about the transaction if the rulings officer believes that the taxpayer intends to proceed with it despite the inability to obtain a favourable ruling.

There may also be cases where a taxpayer submits a ruling request but, in the opinion of the rulings officer, a significant ruling has not been requested. For example, a taxpayer may be planning a corporate reorganization and it is uncertain or even doubtful whether related interest expense is legally deductible. In this case, if the taxpayer has not requested a ruling on interest deductibility, the rulings officer could simply add an opinion at the end of the ruling stating that it is the directorate's view that any interest expense is not deductible; or the rulings officer may (without the taxpayer's knowledge) write directly to the tax services office advising staff to watch for non-qualifying interest deductions by that taxpayer. In most cases, the rulings officer will discuss the opinion with the taxpayer.

We believe that to preserve the integrity of the rulings process and to enable the directorate to satisfy its mission to promote tax compliance, a formal ruling should include all relevant interpretations of the application of the law in respect of a proposed transaction. In this regard, we believe that the directorate should be in a position, and should act, to obtain all facts relevant to the proposed transaction and should provide a complete opinion concerning the application of the income tax law to that transaction. Completeness is particularly important in the context of published rulings, which are a key research source for practitioners. We also consider that any opinions provided should be fully discussed with the taxpayer.

Given an ability to obtain and include all facts in a formal ruling, it is our view that the directorate should add an unrequested opinion at the conclusion of a ruling only if that interpretation has full legal support and is clearly in accordance with tax policy—not if there is simply “an argument” that it is supportable. Reference to the relevance of certain facts, whether known or unknown, could be included in the opinion to frame the appropriate context. In our view, it would not be acceptable for a

rulings officer to correspond separately with a taxpayer's tax services office without the taxpayer's knowledge.

Binding Nature of Rulings

A number of court cases have considered the binding nature of advance income tax rulings. In *Owen Holdings Ltd. v. The Queen*,¹² the Federal Court of Appeal stated that the department's advance rulings and technical interpretations have no binding legal effect. Further, according to the decision in *Bert W. Woon v. Minister of National Revenue*,¹³ the department would not be estopped by its ruling. Nevertheless, as a matter of government policy, rulings are considered binding on the department. However, there are various restrictions and instances where a ruling will become invalid or be revoked after its issuance.

Rulings can become invalid or be revoked in the following ways:¹⁴

1) Rulings are reviewed by tax services office staff during an audit of the taxpayer. If there is an omission or material misrepresentation in the statement of facts or the proposed transaction, the ruling will be invalid and the department will not be bound by it. The auditor will generally consult the directorate in making such a determination. If the ruling is invalid, the tax services office may also consult the directorate regarding the appropriate tax treatment of the transaction.

2) Where a ruling is issued covering a continuing action or series of actions, or where the transaction is not yet completed and it is subsequently determined that the ruling is in error, it may be revoked. The revocation will not be retroactive but will apply only to those actions or transactions that take place after the date of revocation. Before a final decision on revocation is made, the taxpayer is given an opportunity to make representations.

3) A ruling ceases to be valid if it is based on an interpretation of the law and that interpretation is subsequently changed as a result of a court decision. The ruling is considered binding on the department only for the period before the date of the relevant court decision.

4) When an interpretation has been changed by the department otherwise than in the circumstance noted above, the new interpretation will apply to all rulings issued after the effective date of the change, no matter when the ruling request was received by the directorate. Changes in interpretations are announced publicly. Generally, such announcements are made at a public tax conference, in the *Income Tax Technical News*, or in an IT bulletin.

5) If the legislation upon which the ruling is based is amended, the ruling ceases to be valid from the effective date of the amendment.

¹² 97 DTC 5401, at 5404 (FCA).

¹³ 50 DTC 871, at 875 (Ex. Ct.).

¹⁴ IC 70-6R3, supra footnote 7, at paragraphs 10 to 14.

Time To Complete Transaction(s) and Supplemental Rulings

Generally, a ruling is valid provided that the proposed transaction is carried out within six months from the date of issuance of the ruling. However, the time limit will almost always be extended if the taxpayer submits a written request providing acceptable reasons for the delay.

There are many cases where the facts or circumstances relating to a proposed transaction change after a ruling has been issued. In these cases, the taxpayer may write to the directorate for confirmation that the ruling previously issued will not change as a result of the new facts or change in circumstances. Requests of this kind are usually handled promptly.

Cost of Service

The rulings service is provided on a cost recovery basis, and the cost is borne by the taxpayers who request rulings. The current fee, which is set by order in council, is \$90 for each hour spent on the ruling request. The main component of the fee is the time spent by the rulings officer working on the file. Hours spent by the section chief and the director in reviewing the finished ruling also are factored into the fee. However, if the ruling is subject to a review by the GAAR Committee or the Policy Review Committee (PRC), the time spent by the members of these committees is not charged to the file.

In our view, the cost of obtaining an advance ruling, in most cases, is extremely reasonable. In fact, there have been instances where the rulings service has been abused because of the low rate. It is much cheaper for a rulings officer at \$90 per hour to be researching an issue in regard to a ruling request than, for example, a partner or senior manager of a large firm to be doing the same research for \$250 to \$400 per hour. Accordingly, to eliminate the possibility of abuse, we believe that the directorate should have the authority to insist that a ruling request include a fully researched position in support of the proposed transaction.

The most frequent complaint of taxpayers requesting a ruling is that the directorate takes too long to respond. In our view, the turnaround is reasonable given resource constraints; however, there have been instances when we would have gladly paid a higher fee for quicker service. We understand that a two-tiered fee system has been discussed within the directorate: there would be a basic "normal service" fee and a higher fee (say, double the normal rate) for taxpayers who legitimately required an immediate response. However, we understand that such a system may be difficult to implement given government guidelines on recovery of costs.

The Rulings Procedures

The following outlines the rulings procedures from the time of receipt of the request to the issuance of the ruling to the taxpayer.

- 1) The ruling request is received in the directorate and is forwarded to the control unit.
- 2) The control unit logs the request into its electronic correspondence control manager (CCM), and the request is assigned a control number.

It is useful to know what the control number represents when pulling these documents off the electronic commercial tax services. The number is six digits long, beginning with the year (for example, 98). It is then given a seventh digit, which represents the type of product it is. For example, 3 represents a ruling and 5 represents a technical interpretation (the most common documents that are available to the public). Therefore, the number 9800303 represents a ruling request that was received in the directorate in 1998 and indicates that it was the 30th request in that year for a written service.

3) The ruling request is forwarded to the director responsible for that particular area of the tax law. The four directors currently are

- Michael Hiltz—Reorganizations and International Division,
- Brian Darling—Financial Industries Division,
- Rick Biscaro—Resources, Partnerships and Trusts Division, and
- Bryan Dath—Business and Publications Division.

The director may briefly examine the ruling request for contentious issues.

4) The director assigns the ruling request to a section chief. The chief may briefly analyze the issues to be addressed. The chief then assigns the request to a rulings officer. It is possible that there is not enough consultation at this point between the chief and the officer as to the priority of the ruling, the main issues to be analyzed, or, most important, a timetable for completion.

5) When the rulings officer begins work on the ruling,¹⁵ he or she first reviews the ruling request to ascertain whether it satisfies the information and other requirements of IC 70-6R3. The following are the items that are always checked (one or more of which is almost always missing):

- a) payment of a deposit of \$481.60 against the fee for the ruling;
- b) the taxpayer's account number, tax services office, and taxation centre;
- c) the representative's undertaking to pay for any additional cost of the ruling;
- d) the taxpayer's authorization of the representative to act for the taxpayer in respect of the ruling request;
- e) a statement that no issues that are the subject of the ruling request are being examined in any way, shape, or form by the department or by a court;
- f) a complete description of the purpose(s) of the proposed transaction(s);
- g) the technical basis in support of the ruling being sought;
- h) the submission of supporting documents; and

¹⁵ Work may not begin immediately since most rulings officers work on several rulings concurrently. Usually, about 100 rulings are under consideration by the directorate at any time.

i) the consent to publish the ruling and a statement identifying the information to be deleted from the published ruling.

If any of the above items are missing from the ruling request, the taxpayer will receive a letter identifying them and requesting that they be supplied so that work can resume on the file. The rulings officer has the authority to write this letter and sign it. However, some officers initiate a review of the letter at the section chief and/or director level before it is sent to the taxpayer. It is questionable, in our view, whether this additional review is justified. In any case, where the timeframe for the ruling is tight, the taxpayer is expected to provide all the above information when the ruling request is submitted. There are other information requirements that are described in paragraphs 16(a) to (n) of the circular, but any omission of these items will probably not hold up work on the ruling.

6) Provided that all the above information requirements are satisfied, the rulings officer will begin his or her research.

7) Rulings officers have several research tools at their disposal in reviewing a ruling request. All outgoing correspondence from the directorate (that is, rulings, interpretations, advice to the field and other departmental areas, requests for tax policy advice, requests for legal advice, etc.) is on the rulings database. This is the primary research tool and usually the first place the officer goes to find out if any similar ruling requests have been considered. Rulings officers also have access to one of the commercial electronic tax services. Other than these tools, there are consultations with other rulings officers who may be knowledgeable about or may have had previous experience with the particular issue or issues in the ruling. Consultations also generally take place, as needed, between the officer and his or her section chief and director. Of course, there may be numerous consultations between the rulings officer and the taxpayer regarding extra information, clarifications, explanations of the law in support of the ruling, and explanations by the rulings officer why in his or her opinion the taxpayer's position is not supportable.

8) During the course of reviewing the ruling request, the rulings officer also may consult officials in other areas of Revenue Canada, the Department of Finance (for tax policy input), or the Department of Justice (for legal advice) to obtain their views on the issues. Meetings will often be held with these officials. The ruling request may also be reviewed by the GAAR Committee (as discussed later).

9) If, after all the appropriate consultations, possibly including meetings with the taxpayer, a particular issue is still unresolved, it will be reviewed by the PRC (also discussed later). A position on the issue will then generally be taken.

10) The rulings officer will draft the ruling in final form, in more or less the manner and style accepted within that work section. Rulings are not drafted in a consistent style throughout the directorate, and there is no requirement that they be consistent. We see no reason for imposing stylistic consistency on rulings officers. What is more important is that taxpayers

have a general idea of how a ruling will be drafted so that, in preparing the ruling request, they can provide the information in a form that will reduce the need for rewriting and editing by the rulings officer. Some guidance on the drafting of ruling requests can be derived from the published tax rulings (TR) and advance tax rulings (ATR) series and more recently from published severed rulings; however, because of deletions for reasons of confidentiality, published rulings are not particularly helpful as guides to the drafting of arguments in support of a position.

11) The section chief will then review the ruling. Section chiefs have a very large workload and in most cases apply the first-in first-out method. Depending on the section, this approach could add a lot of time to the process. For example, in some areas of the directorate, relatively few ruling requests are received; accordingly, given the priority of rulings, the turnaround on a ruling request in one of these areas should be relatively fast. In other areas, such as the reorganization sections, most of the workload consists of rulings, and the turnaround may understandably be slower.

12) If the section chief is satisfied with the ruling, he or she will sign it and forward it to the director. Depending on the director and on the complexity of the ruling, the director will either approve it immediately or perform a general review, concentrating on contentious issues. Most contentious issues would have previously been brought to the attention of the director and at this point would generally have been resolved.

13) The ruling is put in final form and is usually faxed to the taxpayer, since time at this stage is often of the essence. The taxpayer will review the ruling to ensure that all the information it contains is accurate. Following the taxpayer's confirmation of accuracy, the ruling is formally issued.

14) Copies of the ruling are immediately circulated internally within the directorate and loaded on the internal database. Attached to the ruling (strictly for internal purposes) is a statement of the main issues in the ruling, the positions taken, a detailed analysis of the basis for those positions, and identification of other government sources that were consulted (that is, the Finance and/or Justice departments). This document (internally called the "Statement of Principal Issues") is not released to the tax publishers. The tax publishers do, however, receive a summarized version of the statement, which appears at the beginning of every ruling. Obviously, as a research tool, taxpayers would much prefer the statement of principal issues, which contains a much more frank discussion of the issues.

15) Copies of the ruling are sent to the taxpayer's tax services office and taxation centre.

16) The ruling is severed and sent to the tax publishers. This stage of the process is commented on later in the article.

17) The taxpayer is billed.

Timeliness of Service

As suggested earlier, probably the most frequent criticism of the directorate is that it is difficult to obtain a ruling in a timely manner. The chart

presented in appendix 2 shows that about 20 percent of all rulings are issued within 30 days of receipt of the ruling request, slightly over 40 percent of rulings are issued within 60 days of receipt, and almost 60 percent of rulings are issued within 90 days of receipt.

Our experience is that while timeliness is generally a concern, a timely ruling response depends on several factors, some of which the directorate controls and some of which the taxpayer controls. The main factors are the following:

- Is the ruling complicated by contentious issues that have not previously been addressed by the directorate, or is it fairly straightforward?
- Will the GAAR Committee be reviewing the proposed transaction?
- Which area or section in the directorate is going to process the ruling?
- Which rulings officer is going to process the ruling?
- Is the ruling request well drafted and are the taxpayer's positions well researched and supported by a complete discussion?
- Has the representative kept in contact and/or met with rulings officials?
- Has the representative obtained an authorization for facsimile transmission?

Obviously, where the transactions in a ruling are complicated, involving issues that have not previously been considered by the directorate (or at least issues on which no rulings have previously been given), the ruling will take longer to process and the taxpayer should be prepared for this. The rulings officer will initially spend a significant amount of time developing an understanding of the transaction. Substantial research and consultation will be required to ensure that any position that is taken is legally correct (involving assistance from the Department of Justice where appropriate) and in accordance with tax policy (involving assistance from the Department of Finance where appropriate). In addition, all new positions that the directorate develops are generally reviewed by the directorate's PRC. If there is a GAAR issue, the GAAR Committee also may be involved. Extremely contentious issues may go even farther up the line to the assistant deputy minister. In our view, there is not much that can be done within the directorate to speed up the process for these types of rulings. Generally, contentious rulings are given priority, but the formal process and due diligence must be followed. The directorate, correctly, will not be pushed into issuing a ruling on a new or contentious issue until it is confident that the ruling is legally correct and in accordance with tax policy. Such a ruling may be subject to the involvement of other government officials, and it often takes time to get all the right people together. As will be discussed below, however, the taxpayer can, at a minimum, not impede the process and, at a maximum, significantly speed it up.

While it is understandable (and generally acceptable from our perspective) that contentious or new and complex rulings take a long time to process, it is not acceptable that the processing of a relatively straightforward ruling may take just as long. In our view, a ruling request should

be analyzed immediately upon receipt to see whether, because the issues are straightforward or have previously been dealt with, the ruling can be processed quickly. In these cases, it would be beneficial to put the request on a fast track or to give it priority, establishing an early deadline for the issuance of the ruling.

Our experience has been that the timeliness of a ruling may be affected by the section to which the request is assigned. For example, any request assigned to the international area will generally take a long time to process. This is not to suggest that the quality of the personnel in that area is poor; on the contrary, the section chief and the officers in this area are both technically competent and experienced in addressing the international issues. However, the volume of work assigned to this area is already heavy and is increasing. In addition, with the increased volume of international transactions taking place, new issues frequently arise, and new issues take more time to resolve, for reasons already discussed. At present, there is only one dedicated international section with five or six officers to cope with this huge, and often complicated, workload. We understand, however, from informal conversations with the director general that there are plans to direct more resources to the resolution of international issues. We certainly endorse and look forward to this change. We understand that some workload is already destined to be moved out of the international section to other specialty sections, as appropriate. For example, cross-border reorganization issues, trust issues, and deferred income plan issues will be transferred to the reorganization, trust, and deferred income plan sections, respectively.

Most of our experience with the directorate has been with the reorganization sections. As noted earlier, the bulk of the workload in this area is ruling requests. Our experience with these sections has been very favourable. The personnel are technically competent and very helpful (for example, they have assisted in restructuring transactions that did not quite comply with the technical provisions in the Act where the transaction was otherwise acceptable and in accordance with tax policy). The section chiefs and director have a significant amount of experience with the taxation of corporate reorganizations, and there is a core group of rulings officers who have worked in the area for some time. Of course, because of the heavy workload in this area, it can take a long time to obtain a ruling. However, if there is a legitimate urgency to the ruling request and this urgency is made clear at the outset, an attempt is usually made to give the ruling priority.

As in any organization, there are employees in the directorate who are very experienced and motivated, and there are those who are less so. In the context of a prolonged wage freeze, cutbacks, and reductions of resources that increase workload, we can understand why there may be some unmotivated and disillusioned employees in the directorate. For this reason, the quality and timeliness of service may depend in part on the rulings officer who is assigned to the file. Taxpayers cannot choose the person who will handle their file. Their only recourse is to make sure that

the ruling request fully outlines all the facts, the purposes of the proposed transaction, the time constraints, and the technical basis for the ruling requested, so that no unnecessary delays are caused by omissions. Getting frustrated or trying to intimidate the officer because the ruling process is taking too long is not, in our opinion, an appropriate way to proceed.

The rulings process may be assisted if taxpayers recognize the position of the rulings officer responsible for the file. Rulings officers are often under a great deal of pressure to quickly turn around a ruling. With the resource constraints mentioned earlier, the rulings officer will have several or many rulings in progress at any one time. The taxpayer's aim should be to facilitate the process in various practical and constructive ways.

At a minimum, the taxpayer should ensure that the ruling request is well written, carefully reasoned, and complete. Ideally, the role of the rulings officer would be to copy out the request, changing only the name of the addressee, and issue it back to the taxpayer as a ruling. Infrequent users of the rulings service may find it difficult to judge exactly what the directorate is looking for in the written request. However, as suggested earlier, the published TR and ATR series and the severed rulings published by the commercial tax services are a good guide, along with the specific requirements set out in IC 70-6R3. Clear and concise articulation of the taxpayer's rationale for the ruling requested is essential. The rationale should include statutory and jurisprudential analysis, together with the department's own positions enunciated in IT bulletins, information circulars, and technical newsletters.

It is advisable for the taxpayer to maintain contact with the rulings officer working on the file, both to demonstrate interest in obtaining a timely response and to provide answers to any questions that may arise. In some cases, a personal meeting with the rulings officer is beneficial, so that any contentious issues can be discussed directly, along with the rationale for a favourable ruling. The directorate is generally receptive to such meetings.

Reasonable interpersonal skills and an element of mutual respect for both the rulings officer and the department's views will often produce a more timely and certainly less confrontational process. The directorate can only work with what is provided to it. We recommend full disclosure of all facts and a full discussion of the rationale and support for each ruling requested. Through ongoing dealings with the directorate, a taxpayer and its representative can build a certain level of trust that all information has been appropriately disclosed and all relevant rulings have been requested.

Although some ruling requests are so sensitive as to preclude the use of facsimile transmission, it is recommended that the representative obtain such authorization. During the rulings process, the rulings officer often requests additional information, and work on the ruling may be halted until this information is received. The process will be expedited if the information can be transmitted by fax. Once the ruling is completed,

the directorate can in turn fax the final version to the taxpayer for review before formal issuance of the ruling, to ensure that all the information it contains is accurate.

Finally, as mentioned earlier, we believe that a more flexible rate structure and the addition of several more rulings officers would go a long way toward solving the timeliness issue. Even a simple two-tiered rate, we believe, would be well received. The recently released report of the Technical Committee on Business Taxation¹⁶ makes similar observations.

Policy Review Committee

All important or contentious issues confronting the directorate are brought forward to the PRC. The PRC, which generally meets once a week, is made up of the four directors and the director general. This is where significant policy decisions regarding interpretations of the income tax law are made. The main issues brought forward to this committee arise in the course of considering rulings and requests for technical interpretations. When a contentious issue arises in the course of a ruling—for example, where a taxpayer is arguing against a departmental position and the argument has some merit—the rulings officer and the section chief will generally draft a position paper on the issues, giving a balanced view (it is hoped) of each side of the argument and a recommended course of action. Before the issue is presented to the PRC, the views of the departments of Justice and Finance will usually be sought. The PRC will then debate the issue and either formulate a new position or reaffirm the existing position. As is the case for meetings of the GAAR Committee, taxpayers and their representatives are not permitted to attend meetings of the PRC. The minutes of the meetings are drafted and distributed to all rulings staff. Any changes in position are entered into the internal database, to which all tax services offices have access.

In our view, taxpayers should, at a minimum, have the opportunity to review the position paper that is being presented to the PRC in order to ensure that the facts are accurately described and a balanced view has been taken. In addition, if the position taken at the PRC is unfavourable to the taxpayer, the taxpayer should be given the opportunity to meet subsequently with directorate officials to discuss the decision.

GAAR Committee

It is appropriate to briefly discuss the GAAR Committee in the rulings context for several reasons. First, all the meetings of the committee are held at the premises of the Rulings Directorate. Second, the chair of the committee is Michael Hiltz, the director of the directorate's Reorganizations and International Division. Third, the majority of ruling requests submitted to the directorate seek a ruling that subsection 245(2) will not apply to the transaction or series of transactions.

¹⁶ Canada, *Report of the Technical Committee on Business Taxation* (Ottawa: Department of Finance, April 6, 1998), 10.10.

Because of the directorate's major influence on this committee, rulings officers have direct and easy access to it. Therefore, if there is an argument that GAAR applies to a proposed transaction described in a ruling request, the issue can easily be put on the committee's agenda. The committee is made up of senior personnel from the Rulings Directorate, the Legislative Policy Division, the departments of Finance and Justice, and the Tax Avoidance Division of the Audit Directorate of Revenue Canada. Minutes of all meetings are recorded and available only for internal purposes.

If the rulings officer and his or her section chief and director agree that a ruling request should be reviewed by the GAAR Committee, the taxpayer will be informed. The taxpayer will likely have already provided the directorate with a submission detailing why GAAR should not apply to the proposed transaction. At this point, a more detailed submission can be made. This submission, along with the rulings officer's submission, will be provided to members of the committee in advance of the meeting. It is hoped that the inclusion of the taxpayer's submission to the committee will result in a balanced view of the issue to be discussed.

If the committee decides that GAAR applies to the proposed transaction, an unfavourable ruling will be given unless the deal is restructured or the ruling is withdrawn. A decision by the GAAR Committee that GAAR applies to the proposed transaction will generally kill the ruling and probably the transaction as well. It is this significant consequence that makes it important and fair that the taxpayer's voice be heard, if not at the initial meeting of the full committee, then at a subsequent meeting where the decision can be discussed. Such meetings are often arranged between the taxpayer and one or two committee representatives, together with the rulings officer to whom the rulings request was assigned.

Other Rulings Issues

Obtaining a Ruling on a Filing Position

Ruling requests are currently considered by the directorate only when they refer to one or more proposed transactions. There are many cases where a taxpayer has completed a transaction without realizing at the time the tax consequences that would follow from it. When the time comes for the taxpayer to calculate its tax provision for financial statement purposes or to file its return for the relevant year, the taxpayer realizes that there is a significant tax issue that must be resolved before the tax provision can be prepared and the return filed. In these cases, we believe that the taxpayer should be able to ask the directorate for a binding ruling on its filing position,¹⁷ provided that all the requirements in IC 70-6R3 are met.

¹⁷ This kind of ruling is the only one currently available in the United Kingdom, where it is referred to as a "post-transaction ruling." See Winnie Chan, "Binding Rulings" (May 1997), 18 *Fiscal Studies* 189-210, for an interesting discussion of the recent UK experience in rejecting proposals for the introduction of formal pre-transaction rulings.

The only option currently available to the taxpayer in this situation is to request advice from its tax services office. At most, the taxpayer will receive a non-binding opinion from the tax services office, or the tax services office will refer the question to the directorate. If the matter is referred to the directorate, the matter is resolved at the directorate-tax services office level rather than the directorate-taxpayer level, and in any event, it is still non-binding.

Although some taxpayers will prefer to research and formulate their own filing position, it would be useful for taxpayers to have the option of requesting a binding opinion in order to file their income tax return in an appropriate manner. We realize that this innovation could place additional time pressures on the directorate, but we believe that it would be a well-received and valued service. This service could possibly be achieved in the context of the new “real-time” audit, which is available to certain large taxpayers, provided that the Rulings Directorate is consulted where appropriate.

Staffing the Directorate

As previously mentioned, the rulings staff is made up of accountants and lawyers. In our opinion, the staff as a whole is technically competent. The challenge for the directorate is to retain its best people and at the same time to recruit technically proficient officers to fill vacancies.

It is difficult in the context of the existing government pay scales to keep people from leaving. Most of the section chiefs in the directorate were recently promoted to a higher grade; where before there was only one level or grade separating the section chiefs from the rulings officers, there are now two levels. One purpose of this change was to increase the wage gap between supervisors and officers, in recognition of the significantly heavier workload and responsibilities of a section chief as compared to those of a rulings officer. Another purpose was to assist in retaining these key people.

We agree with the increased salary for section chiefs; however, we believe that it should be matched by increased salary levels for the rulings officers. These are the people who, in our view, are the most likely to leave the directorate for the higher-paid jobs in the private sector—and in the past year, several experienced rulings officers have done exactly that.

Role of Rulings Officers

The job of a rulings officer is to apply the income tax law to a proposed transaction or series of transactions as presented in the ruling request. However, what is the rulings officer’s role where, for example, a ruling request does not quite satisfy the technical provisions of the law, but the transaction is otherwise “good for Canada” in respect of providing significant employment and other economic benefits?

It is unfair, in our opinion, to expect a rulings officer to make a judgment as to what is good for the country. This is not part of the mandate of the department, and it is a judgment that a rulings officer is not trained or

qualified to make. We can understand the reluctance of the directorate to rule favourably with regard to transactions that, while good for Canada, are clearly not in accordance with the law. The 1996 auditor general's report¹⁸ may well have ended any chance of taxpayers' obtaining favourable rulings in such cases. (See the later discussion under "The Big Chill.")

There are many instances where a transaction is clearly in accordance with tax policy, but because of a flaw in the legislation, it does not technically fit within the four corners of the particular legislative provisions. There are also cases where tax policy is satisfied and there is a good argument that the technical provisions of the Act also are satisfied, but there is another way to interpret the provision, which is contrary to the taxpayer's interpretation, and that is the position taken by the directorate. It has been our experience that in such cases it is increasingly difficult to obtain a favourable ruling. There may be two reasons for this:

1) *Influence of the auditor general.* If a position is taken that is not strictly in accordance with the law and a loss (or a perceived loss) of tax revenue results, whether or not the position makes sense, the responsibility for the loss of tax revenue will fall on Revenue Canada. The argument is that if the transaction is in accordance with tax policy but the law does not permit the desired results, it is the responsibility of Finance to amend the law. See our comments below under "The Big Chill."

2) *Transparency of the Rulings Directorate.* The directorate now publishes virtually every opinion it produces, including all rulings (since 1996), all technical interpretations, and even a significant amount of internal correspondence. It is consequently important, particularly with respect to rulings, that the directorate be both cautious and consistent, since these rulings are now used as research tools and are being relied upon by all taxpayers. Whereas in the past there may have been some room for flexibility in particular situations, there is little now.

The Big Chill

The 1996 auditor general's report criticized the Rulings Directorate for two rulings that it issued (in 1985 and 1991) on transactions involving a family trust that moved some \$2 billion of assets out of Canada. Following the release of the report and the related hearings of the Standing Committee on Finance of the House of Commons ("the standing committee"), the directorate was rumoured to have become overly cautious in providing advance rulings ("the big chill").

Although the standing committee completely exonerated the Rulings Directorate,¹⁹ several internal changes were implemented within the directorate. In particular, all conversations with officials of other departments—

¹⁸ Canada, *Report of the Auditor General of Canada to the House of Commons* (Ottawa: Supply and Services, May 1996).

¹⁹ Canada, *Minutes of Proceedings of the Standing Committee on Finance*, third report to the House, 35th Parliament, 2d session, issue no. 3, September 1996.

most particularly Finance—and the results of those conversations, are now required to be carefully documented.

With regard to whether it is now more difficult to obtain a favourable ruling, and to obtain it on a timely basis, in our view, it probably is more difficult but not necessarily because of the auditor general's comments. The fact that all rulings are published also makes it somewhat more difficult, or at least more time consuming, to obtain a favourable ruling. As suggested above, whereas in the past there may have been some flexibility in rulings decisions, in our experience there is now little or none, given the complete transparency of the process.

Roy Shultis, the current director general of the Rulings Directorate, has said on several occasions that he does not want this to be the tax community's perception of the directorate. He considers that taking difficult interpretative positions where the tax policy is clear but the law is not, and applying these positions consistently and transparently, is an inherent part of the directorate's job. The system is in place to ensure that appropriate consultations with Finance and Justice take place before positions are taken and published. Shultis's view, of course, would also be the preferable approach from Finance's perspective (that is, to make the law work where appropriate). As already mentioned, the directorate came through the 1996 auditor general's review very well. The majority report of the standing committee concluded that it may well be inappropriate for the auditor general's officials to substitute their own views for those of Revenue Canada's officers if the actions of the latter are reasonable, professionally competent, and carried out in good faith.

What is the role of the Rulings Directorate where the ruling requested satisfies the technical provisions of the Act and does not offend tax policy, but the dollar figure involved is so huge as to significantly erode the tax base? Just as rulings officers are not qualified to judge what transactions are good for Canada, they are equally not qualified or mandated to be protectors of the Canadian fisc. Regardless of the dollar figure involved, if a proposed transaction satisfies the technical requirements of the Act (including the tax policy) and is not an abuse or misuse of the Act read as a whole, a favourable ruling, in our view, should be issued.

In response to the implication by the auditor general that Revenue Canada should not have issued rulings to the family trust confirming its views, because of the severe consequence to the fisc, the standing committee stated:

Revenue Canada is under no legal obligation to issue an advance tax ruling. Revenue Canada itself decides whether or not a ruling should be given. That decision may be based on any reasonable criteria it considers appropriate. Revenue Canada could refuse to issue rulings, however well-founded the requests might be in law, for the sole reason that the contemplated transactions would (or might) be costly for the Canadian fisc.

It is a separate question, however, whether it would be appropriate for Revenue Canada to deny advance rulings for that reason alone. Especially where there is no indication that tax avoidance is the motivation for a

transaction, most taxpayers would expect Revenue Canada not only to apply its interpretation of the law impartially, but also to make that interpretation available if it is sought in a ruling request. For example, few taxpayers would likely support a decision by Revenue Canada not to rule on any transaction with a total value over some arbitrary amount. The advance rulings process calls on Revenue Canada to function as the authoritative interpreter of the law, not (or at least not primarily) as self-appointed guardian of the tax base.

This does not mean that Revenue Canada is or should be blind to the nature and consequences of the transaction it rules upon. Advance rulings applications are, the Committee understands, a major source of intelligence on new tax planning and avoidance techniques. And while it has not done so, there may be good reasons for Revenue Canada to implement a policy of declining to rule where egregious tax avoidance is clearly involved. In the absence of such a policy, however, the Committee cannot conclude that it would be appropriate for Revenue Canada to base its rulings decision solely on the anticipated effect of the planned transactions.²⁰

The standing committee concluded the above comments by stating that even if it were the policy of the directorate to refuse to rule on costly transactions, the committee was not persuaded that the two rulings given to the family trust would be a cause for such a decision.

OTHER SERVICES OF THE DIRECTORATE

Technical Interpretations (Written and Verbal)

Second to advance rulings, the directorate's other main service to the public is the provision of technical interpretations. Written technical interpretations of the income tax law are provided in response to written requests for this service. The directorate has stated in IC 70-6R3 that it will not provide a technical interpretation if it relates to a specific proposed transaction. In these cases, a ruling must be requested. In addition, requests for a technical interpretation on a completed transaction must be addressed to the local tax services office, which also provides over-the-counter advice and assistance on general matters.

What type of written technical interpretations does the directorate provide? In view of the above restrictions, it appears that the policy is to provide technical interpretations only on purely hypothetical transactions and specific statutory interpretation. As indicated earlier, 1,464 written technical interpretations were issued by the directorate in 1997. We suspect that very few of these interpretations were in respect of hypothetical transactions. Rather, behind every supposed hypothetical transaction is likely a proposed transaction (or part of one) or a completed transaction. We believe that the directorate realizes this and nevertheless will generally attempt to answer the specific question, although often in only a general manner.

In many cases, a question on a completed transaction will be properly sent to the local tax services office, but because of the lack of expertise

²⁰ Ibid., at 47.

of office staff, it will be forwarded to the directorate for the drafting of an answer. The directorate's primary concern, with which we sympathize, is that it does not want to be put into a position where it would be in conflict with an interpretation given by a field office. Therefore, if the directorate becomes aware that a taxpayer is opinion shopping, it will likely not answer the request.

Technical interpretations are not advance rulings and are not binding on the department. Despite their non-binding nature, and particularly because these technical interpretations are published by the commercial tax services, the department will generally stand behind these interpretations. If an interpretation has changed, the department will attempt to announce the change in such a manner that all those who may have relied on the old interpretation will be notified. This notification may occur through an announcement at a conference, an announcement in an IT bulletin or technical newsletter, or in some cases personal letters to those affected.

This service is provided free of charge by the directorate but, depending on the area within the directorate, is also properly given a low priority. In the areas that have a high volume of rulings and a heavy workload, it can take a very long time to obtain a technical interpretation. We recommend that a charge for written interpretations be instituted if a speedier response can be guaranteed.

Telephone Inquiries

Without a doubt, the way to get a fast interpretation of the law is to request it over the phone. As evidenced by the high number of telephone inquiries (almost 20,000 calls in 1997), most practitioners appear to realize this. In our view, this service is an excellent one, if its limitations are taken into account.

Each of the specialty areas in the directorate has one person who is dedicated to the phone service every day. The method of participation on the phone service varies between sections. For example, in some sections, a different officer is on phone service every day, while in others an officer may be on for a week at a time.

The process (which in the past has been frequently changed and has nearly been cancelled on numerous occasions) requires the taxpayer to call the general rulings inquiry telephone number (which currently is 613-957-8953). The caller is asked to identify the area of the tax law or the specific provision of the Act on which an interpretation is requested. The call is then forwarded to the appropriate rulings officer on phone service for that day. The particular rulings officer will generally not answer the phone. The advantage of this practice is that the caller can leave a detailed message so that the officer can then do preliminary research before calling back. In almost all cases, the officer will call back the same day or the next day.

There is no formal limit on the amount of time an officer is permitted to spend trying to answer the particular question. Our experience has

been that half-an-hour to one hour is the norm. The type of response that taxpayers receive is heavily dependent on the particular officer dealing with the call. Some officers will go to great lengths to try to provide useful information. This will involve, at a minimum, researching the internal database, giving the issue serious thought, and consulting other officers and the section chief. It could also involve telephone consultations with personnel in other areas of the department (such as audit or assessing), with legal advisers, and with tax policy officers at the Department of Finance. Other officers will not go to these lengths and after a brief review of the database will provide a very general response or will tell the caller to send in a written request. Of course, if the question is complicated, involving a number of issues, it should be submitted formally in writing. We recommend that clear and consistent service standards for the phone service be implemented and communicated to taxpayers (perhaps in a revision of IC 70-6R3).

As already mentioned, written technical interpretations are not binding. Given the length of time required to research and respond to a written interpretation as compared to the relatively short time to give a verbal interpretation, a verbal interpretation should obviously be given less weight than a written one. The most that a caller should expect to obtain from a telephone inquiry is some useful information that reinforces the caller's current view of an interpretation or that raises doubts about a particular interpretation. In our view, the telephone service is very useful and should be maintained.

Interpretative Guidance

Yet another service that the directorate provides is interpretative guidance through its published products. The tools that are used to provide this guidance are

- IT bulletins,
- technical newsletters, and
- published technical interpretations and rulings.

IT bulletins continue to contain the official pronouncements of Revenue Canada that can be relied upon by taxpayers in virtually every case. They are used extensively by both taxpayers and practitioners and internal departmental staff. IT bulletins do not have the force of law but have been relied upon in many court cases as an important interpretative aid, particularly where the interpretation of a provision of the law is ambiguous. The greatest criticism of this product is that it is not kept current. Part of the problem is the volume of bulletins. Over 400 are currently in force,²¹ and it is extremely difficult to keep them all up to date at the same time.

A number of changes have recently been made or are in the process of being made which should improve the timeliness and usefulness of this

²¹ In fact, 529 bulletins have been issued, but cancellations and consolidations over the years have reduced the volume of bulletins currently in force to slightly over 400.

product. A concerted effort is being made to reduce the number of outstanding bulletins by cancelling those that are obsolete or those that are no longer very useful or by combining them with other bulletins. Also, the drafters of bulletins are now mainly rulings officers who are specialists in the particular area of the tax law, rather than generalists. The result should be faster preparation and more specifically targeted bulletins. Pure explanations of the law are being cut back in favour of more technical interpretations. In addition, the review process has been streamlined.

A recent published product called *Income Tax Technical News* has relieved some of the pressure from the IT bulletins. This publication provides the department's interpretation of the income tax law on topical income tax issues. Because of its focused nature and streamlined review process, it provides a method of communicating important information in a relatively fast manner. The positions taken in the newsletter are incorporated into the relevant IT bulletin when the bulletin is next revised. To date, there have been 12 issues of the newsletter. The goal is to issue 4 to 5 annually. The positions taken in a newsletter carry the same weight as IT bulletin positions. The newsletter is distributed in the same manner as the bulletins.

Another way in which the directorate provides interpretative guidance is through its participation at major tax conferences held throughout the year by organizations such as the Canadian Tax Foundation, the Tax Executives Institute, and the various provincial accounting bodies. The proceedings of these conferences are generally published and become another interpretative tool available to all taxpayers.

Published Rulings

There have always been a number of reasons for not publishing rulings. These have included

- the need to maintain the confidentiality of taxpayer information;
- lack of useful information for the public;
- undue reliance placed on the ruling in situations that may not be the same; and
- lack of departmental resources.

Notwithstanding these reasons, which are still applicable today, the department published two series of selected advance tax rulings. The first series called the TR series began in 1974, contained 101 rulings, and ended in 1980. The second series called the ATR series started in 1985, contained 70 rulings, and ended in 1996. None of these rulings were updated to reflect new law or new interpretations. At the 1995 annual conference of the Canadian Tax Foundation, Michael Hiltz of the directorate announced that starting in 1996 all rulings issued would be published in severed form.²²

²² Michael A. Hiltz, "Revenue Canada Review," in *Report of Proceedings of the Forty-Seventh Tax Conference*, 1995 Conference Report (Toronto: Canadian Tax Foundation, 1996), 52:1-12, at 52:2.

Effective for rulings received in the directorate after 1996, the taxpayer must consent to the release of the ruling, in severed form, to the public. If the taxpayer does not submit the consent with the ruling request, work on the ruling will not commence. In addition, the taxpayer is required to attach a statement identifying the information to be deleted from the text of the ruling. If the taxpayer is requesting that information other than names, addresses, and identifying numbers be deleted, the reasons for such deletions must be provided. If in the opinion of the rulings officer the taxpayer is deleting information over and above what is reasonable, work on the ruling either will not begin or will cease if agreement cannot be reached. Once a ruling has been issued, a severed version will follow. At this point, the taxpayer can return a signed copy as evidence that the severed version is acceptable or can request that changes be made. Again, the changes must not be more than those reasonably required to protect the taxpayer's identity. If the taxpayer does not consent, a second request will generally be sent out. If it appears that the taxpayer is not going to consent, the ruling may be revoked.

Usefulness of Published Rulings

The department decided to publish all advance tax rulings in part because practitioners requested that they be published and in part because the auditor general recommended it. Their usefulness as a research tool, however, remains to be seen, since it is often difficult to reconstruct proposed transactions that are complex in nature.

Most rulings that we have seen are heavily sanitized, probably in excess of what was reasonably required to protect the taxpayer's identity. The directorate has adopted the policy of issuing all rulings in generic form to help make them more understandable; however, it appears that not all work sections within the directorate are following this policy. We have seen relatively few rulings in generic form. Some of the reasons for this, according to informal discussions with rulings officials, is that in the case of long rulings, it is difficult and time-consuming to convert the ruling to generic form. Although the ruling may be more useful to the public in generic form, this format is cumbersome and confusing to the taxpayers who requested the ruling and are paying for it.

FUTURE PLANS OF THE DIRECTORATE²³

The directorate has recently recruited 13 new rulings officers to replace those officers who have left; 7 of the officers have come from outside the government and 6 from other departmental areas. These additions have significantly relieved the workload pressure that had built up during the summer of 1997. Moreover, the directorate is still in need of additional resources if service is to be improved.

²³ We understand these to be the future plans of the directorate from various conversations with directorate officials during the drafting of this article.

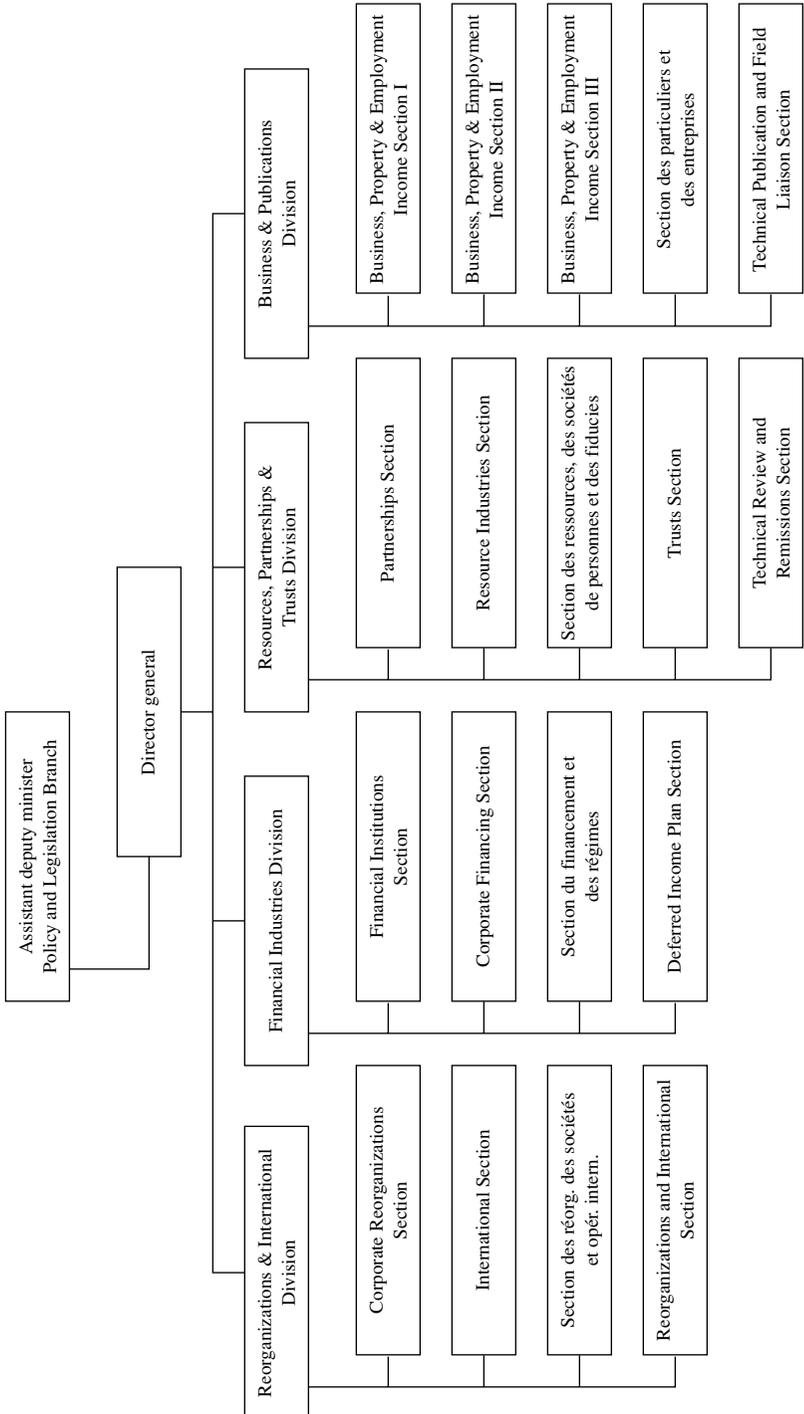
Our comments on operational and other adjustments to improve the rulings process appear to be timely and will be given serious consideration by the directorate. We understand that the directorate has just embarked on an ISO 9000 process review to ensure that its quality management system is as efficient as possible. This review may take up to 18 months to complete, but the benefits usually include improvements in productivity, timeliness, and organizational morale, which will lead to improved client service.

We understand that with the benefit of the ISO 9000 process review and a few additional rulings officers, the directorate will seriously consider improvements to service standards in regard to rulings. If the average turnaround time for a ruling were substantially reduced, we believe that the volume of ruling requests would significantly increase. As a consequence, the cost of the added resources needed to implement improved standards could very well be recovered through increased workload.

CONCLUSION

In our view, with the resources that it has, the directorate does a good job in providing a rulings service to Canadian business, which most agree is a very valuable service. We do, however, have some concerns about specific aspects of the service, particularly with regard to timeliness. We believe that the timeliness issue could be addressed through the implementation of clear service standards that are stringently adhered to. We certainly endorse the ISO 9000 process review if it, combined with an increase in resources, will result in a more timely rulings service. The directorate should be provided with the resources that it needs to implement these improvements.

Appendix 1: Income Tax Rulings and Interpretations Directorate



Appendix 2: Timeliness of Service

