CANADIAN TAX *Highlights*

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HYBRIDS AND THE OECD TREATY

An OECD source has suggested that recently published proposals to amend the model treaty commentary's application to partnerships will be incorporated in the next update.

Numerous examples are included. In one, a partnership (P) is formed in state P where it earns royalty income not attributable to a state P permanent establishment (PE). State P treats P as a transparent entity for tax purposes, but state R, where the partners are resident, treats it as a taxable entity. Should state P grant a reduced rate of withholding on the royalties? The committee concludes that state P should not be required to grant treaty benefits because the partners "are not liable to tax on the partnership income under [state R's] allocation rules." The commentary proposals reflect that view: the source state must examine taxation in the state of residence to determine the application of treaty benefits. Canada has not expressed any reservations about these proposals. This approach could have a significant impact on Canada-US cross-border structures. Assume that a partnership (Hybrid) formed under Canadian provincial law derives Canadian-source income not attributable to a Canadian PE. Hybrid has two US partners and elects under the check-the-box regs to be treated as a corporation for US tax purposes. If the Canada-US treaty applies as the OECD proposals suggest, neither the partnership nor the partners may be entitled to treaty benefits, thus leaving payments to Hybrid that are subject to part XIII tax, including interest and royalties, exposed to the non-treaty rate of 25 percent. The proposals do not broach the subject of whether tax relief is available when the funds are repatriated to the partners, who are then "liable to tax" on the income. ("The Application of the OECD Model Tax Convention to Partnerships" is available in the Foundation's library.)

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In This Issue

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PROVINCIAL TAX ON INCOME

A joint Finance and Revenue release, "Federal Administration of Provincial Taxes: New Directions," details guidelines on new tax collection measures and on a model for giving the provinces and territories the option to levy personal income taxes on either taxable income or basic federal tax. A tax-on-income system allows greater flexibility to set separate tax policy and greater protection from the revenue-base impact of changes to federal tax rates and credits. The assistant deputy taxation ministers of the 11 provinces and territories with tax collection agreements with the federal government have accepted the guidelines.

The new system preserves certain benefits of the existing combined system, such as a single tax form and a single collection agency, but the compliance burden for individual taxpayers will undoubtedly increase. The tax base remains federal taxable income, but there is increased control over the number of tax brackets and associated tax rates, surtaxes, low-income tax reductions, and refundable tax credits. Provinces and territories also control a distinct block of non-refundable tax credits—to be multiplied by the lowest non-zero provincial or territorial tax rate—and may top up federal credits or add their own unique credits. Instead of adopting future federal tax credit increases, the provincial or territorial credit value may be maintained at the lesser of its 1997 value and its current-year federal value. Provinces and territories can increase expenditure-based credits—for example, CPP, EI, tuition fees, medical expenses, and charitable donations—but cannot reduce them below the federal level.

Another set of guidelines allows for the federal administration of a much broader range of provincial and territorial taxes. A province may not "poach" by providing incentives only to taxpayers outside its jurisdiction to encourage their relocation to the province or territory. The federal government charges for administering provincial and territorial tax measures are graduated to reflect the degree to which the measures are harmonized with federal policies.

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Inter Vivos Trusts Alive

Under a spousal trust, only the spouse can benefit from the trust during his or her lifetime, and the trust assets are deemed disposed of at death. The introduction of joint spousal and alter-ego trusts in revised draft legislation of December 1999, effective for trusts established after 1999 by individuals at least 65 years old, may boost interest in inter vivos trusts for estate-planning purposes.

The new trusts are modelled on the spousal trust. A spouse may roll assets to a joint spousal trust with both spouses as initial lifetime beneficiaries. A deemed disposition is deferred until the survivor's death, mirroring the tax effect of assets held directly and inherited by the survivor. In an alter-ego trust, the individual who gifts assets to the trust must be entitled to receive all the trust income before death; no one else may receive income or capital before then. A deemed disposition of trust assets occurs on the individual's death, and the 21-year rule applies thenceforth. In both types of trust, named beneficiaries—for example, children—may be entitled to receive trust income and capital after the death of the surviving spouse or individual, making these trusts effective tools for avoiding probate. Avoiding probate may be a dollars-and-cents issue—the tax is 1.5 percent of the gross estate in Ontario and 1.4 percent in British Columbia—or there may be other motivations. For example, probate is a public process. A list of the deceased's assets and their value is included in the probate application and may be copied by anyone for a nominal fee. In addition, provincial legislation allows certain dependants to request that the court rewrite the will, opening up the possibility of family friction; but in most provinces inter vivos trusts are not affected, depending on the types of powers retained by the settlor. Such legislation in Ontario, Prince Edward Island, the Yukon, and the Northwest Territories may be triggered if at death the deceased retained a power to revoke the trust or a power to consume, invoke, or dispose of the trust principal.

Under the draft legislation, a taxpayer may establish a joint spousal trust and gift to it retractable shares issued in a standard estate freeze without triggering immediate tax on the capital gain; all trust income is available for use by the spouses during their lifetimes and attributed to the taxpayer for tax purposes. On the death of the survivor, the trust assets are held for named beneficiaries, effectively bypassing probate. If the retractable shares held by the joint spousal trust or alter-ego trust are the typical high-low shares, the trust may be able to transform the deemed capital gain on death into a deemed dividend by retracting them after death and triggering a capital loss to offset the deemed capital gain, provided that the trust is not affiliated with the corporation at the time of retraction.

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It's All Relative, or Is It?

The annual review of tax burdens by the OECD shows that Canada does not have too high a tax burden; it simply has the wrong neighbours and business competitors. In 1997, the latest year for which complete information is available, total taxes in Canada—defined by economists to include such alternatives as liquor board profits—represented 36.8 percent of gross domestic profit (GDP). That was a small increase from the previous year but below the unweighted average of 37.2 percent for all OECD countries.

In fact, Canada ranked 15th of the 29 OECD members, well below the Scandinavian countries and below Germany and France, for example, and only slightly above the United Kingdom and New Zealand, but well above Japan and our closest neighbour, the United States. Canada was below the unweighted average for the European Community—41.5 percent—but exactly the same as the average for the G7 countries.

The ratio of tax collections to GDP is the best available comparison of overall tax burdens, but does not tell the whole story. Differences in the provision of public services can offset tax differentials in some cases. The most obvious example is health care: in Canada, the tax-supported system is more comprehensive than the US system, which may result in lower taxes for employers or for the self-employed, who then face high health-care insurance premiums.

When one looks at the averages, Canada's position appears good, but some details are disturbing. Canada has a higher personal income tax burden than all but five countries, and the second highest property tax burden. Canadian social security taxes (generally those on payrolls) are well below average and about half the US level, but our old age pensions, financed out of general tax revenues, constitute a larger proportion of the overall social security program here. Taxes levied in Canada on consumption (general sales taxes and excise taxes on specific goods and services) are well below the OECD average but about two-thirds the size of comparable US taxes, a fact not lost on Canadian tourists to the United States. The overall Canadian tax burden has changed little relative to the averages in the world's industrialized countries, but it has deteriorated relative to our major trading partner and closest neighbour, the United States.

Taxes as a Percentage of GDP

	Canada	US	European average	OECD average
1965	25.9	25.0	26.4	25.8
1970	31.2	28.1	29.7	28.9
1975	33.1	27.5	32.9	31.2
1980	32.0	27.6	35.4	32.8
1985	33.1	26.9	37.6	34.5
1990	36.2	27.6	38.3	35.6
1995	35.4	28.8	39.1	36.5
1997	36.8	29.7	39.9	37.2

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Turning the Screw

Almost three years ago Ontario announced that most computer software was tangible personal property (TPP) subject to retail sales tax (RST). Ontario auditors are now seeking to ensure that the computer consulting industry is charging RST on its taxable services, a move that has surprised many of those affected.

A taxable service is defined to include any "labour provided to install, assemble, dismantle, adjust, repair or maintain" TPP. Thus, once software was legislatively characterized as TPP, most activities performed on it became technically taxable; although this was not a change in Ontario's position, its earlier policies were not always clear or consistently applied. Now Ontario's computer consulting industry is finding that auditors are assessing most of its services as subject to RST, which means an additional 8 percent cost applied to their gross revenues over the last four years, plus interest.

There are exceptions if the services are purely advisory or are related to custom software, but practical impediments exist. For example, non-taxable pure consulting services may become incidental to other taxable services, and may be considered bundled into one taxable service even if the critical and time-consuming diagnostics resulted in only a few physical adjustments (such as reinstalling software). If services are offered under a fixed-price contract, a similar result flows if even one taxable service is involved: Ontario takes the position that the fixed price is fully taxable even if there are substantial non-taxable components. Services relating to exempt custom software suffer from the difficulty of determining what such software is, once the obvious examples are set aside. For example, the two-times rule says that taxable software becomes custom if the modifications cost more than the original purchase price, but that price is often not determinable.

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Donations Made in a Will

A recent technical interpretation deals with whether a donation is made by a will. Revenue says that if a will grants the executor discretion to donate, within a specified range, to a particular charity, the range minimum is a donation qualifying for a tax credit in the terminal or preceding year's return. A donation over the minimum is at the trustee's discretion and may be claimed in the estate's trust return only. Revenue also says that it is currently reviewing its position (set out in 1998 access letters) that allowing an executor to choose between several named charities renders the gift eligible only for credit in the trust's returns, not the deceased's.

Determining whether a donation was made in a will may be critical if shares of a private company are involved. Assume that an individual dies owning preference shares of an investment holdco. The will allows the executors to gift between $400,000 and $500,000 to any registered charity, a donation structure designed for credit in the trust return only. The preference shares will be redeemed in the estate's first taxation year, and the resulting capital loss will be carried back to the terminal return. The donation tax credit will set off the tax on the redemption in the trust return and may not be fully utilized if relegated to the deceased's returns. The technical requirements of an alternative plan—the bump—may not be satisfied, or it may otherwise be less attractive. If Revenue changes its current interpretation of when a gift is made by a will, shifting the donation tax credit to the trust return of the estate may be very difficult unless the executor is given significant discretion over the donation amount. Revenue is unlikely to view a gift as made by a will if it is made by an executor with discretion to donate any amount up to $500,000 to any charity. However, such discretion may put the executor at risk of being challenged by the beneficiaries if he or she decides to donate a significant amount. A simple technical solution would be to allow an executor an election to claim the credit in the deceased's and/or the estate's trust returns.

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New IRS Regs on Gift Valuations

In April 1999, the IRS held public hearings on proposed gift and estate tax regulations requiring taxpayers to make adequate disclosure to support the FMV of transferred property. (See "Disclosure for US Gifts," *Canadian Tax Highlights*, September 27, 1999, at 68.) These proposals involved costly, detailed, and onerous disclosure of the valuation methods used and factors considered to facilitate determination of the legitimacy of taxpayer-furnished valuations, particularly if minority and marketability discounts were claimed on transferred business interests. As a result of testimony at the hearing, the final regs incorporate the appropriate methodology for determining the nature and extent of discounts. The tax return need include only information and data relevant and material to the determination of FMV. An exemption from filing detailed financial and other information related to the transferred assets is available if a professionally prepared valuation report was done.

A new standard is set for such valuations. The existing IRS definition—that "the appraiser is an individual who holds himself or herself out to the public as an appraiser or performs appraisals on a regular basis"—now encompasses an objective standard of competency. The valuator must be able to demonstrate that he or she is objective and "qualified to make appraisals of the type of property being valued" based on his or her "background, experience, education and membership, if any, in professional appraisal associations." The regs also establish valuation-report content standards similar to those promulgated by professional appraisal societies. Adequate disclosure as contemplated in the final regs still requires a statement describing any position taken that is contrary to any proposed, temporary, or final US Treasury regs or revenue rulings—several relate to business valuations—published at the time of the subject transfer.

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Retroactive RRSP Beneficiaries

Starting in 1999, a federal budget proposal allows a financially dependent child or grandchild of a deceased RRSP or RRIF annuitant to receive a refund of premiums out of the annuitant's RRSP, even if there is a surviving spouse. The funds may thus attract a lower tax rate and the deferral may be longer. For deaths from 1996 to 1998, an election filed by May 1, 2000 may designate a dependent child or grandchild as a qualified beneficiary. (April 30, 2000 is a Sunday, which makes that due date one day later.) Filing details are now available.

The child or grandchild (that is, his or her legal guardian) and the deceased's legal representative elect by filing in writing a letter with the tax centre that processed the deceased's or the beneficiary's most recent return. The election should state the deceased's name, SIN, and date of death; the affected plans' names and numbers; the name of the deceased's legal representative; the beneficiary's name, date of birth, SIN, and relationship to the deceased; whether the beneficiary was financially dependent and whether that dependency was due to physical or mental infirmity; and that both are electing to treat the beneficiary as a qualified beneficiary. Information about the taxation of the amounts paid out of the RRSP should also be provided. Form T2019 should be filed to designate all or part of amounts paid from the RRSP to the estate as a refund of premiums received by the elected beneficiary. Instructions should indicate the proper adjustments to the deceased's return for the year of death; the redistribution of the deemed RRSP benefit pursuant to the election; and the increase to the beneficiary's income for the year the refund of premiums was received. If there was a permissible transfer to an RRSP or RRIF or to an issuer to purchase an eligible annuity by February 29, 2000, an official receipt should also be submitted.

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Exit, Take Three

Finance released revised draft exit tax legislation on December 17, 1999 that fine-tunes proposals first released in October 1996 and modified in December 1998. (See "Leaving Home," *Canadian Tax Highlights*, January 19, 1999, at 1.) The revisions provide little additional relief for taxpayers.

An individual who emigrates from Canada or a Canadian-resident trust that distributes property to a non-resident beneficiary is generally subject to tax on a deemed FMV disposition. The limited category of exempt assets is expanded to include future rights to certain employee and other benefits. Payment of tax can be deferred (without interest) by providing and maintaining adequate security with the minister, an option available only on distributions of taxable Canadian property (TCP) in the case of trust distributions. Further to Finance's announcement in September 1999, Revenue may accept different or less security than normally required if undue hardship prevents an individual from providing adequate security or having it provided on his or her behalf. The minister is not obliged to exercise this discretion, and no appeal is available if he fails to do so.

The December 1998 proposals provided that an individual (other than a trust) who becomes non-resident can elect to unwind the deemed disposition on departure if he or she returns within five years holding the same property. The five-year limitation is now eliminated. Different treatment applies to TCP and non-TCP. In both cases the election generally negates the deemed disposition on emigration, but on the ultimate disposition of non-TCP, no tax is imposed on gains (and no relief is granted for losses) that accrued during the period of non-residence. No similar relief is yet provided for a Canadian-resident trust that distributes property to a non-resident beneficiary who becomes a Canadian resident: there is no ability to unwind the taxable event or, in the case of TCP, to obtain a release of security from the minister.

If an individual emigrates from Canada and owns reportable property with more than $25,000 FMV in aggregate, the new proposals specifically require that he or she file a list of all such properties on or before the filing due date for the year of emigration. Certain property is excluded, including Canadian cash and deposits, personal-use property with a value less than $10,000, and certain assets of short-term residents of Canada.

Interests in Canadian-resident personal trusts acquired for no consideration are generally exempt from the exit tax rules. A new anti-avoidance measure prevents the use of spousal trusts to avoid the exit tax or to convert what would be a capital gain subject to ordinary tax to a trust distribution subject only to withholding tax. If a taxpayer transfers property to a spousal trust after December 17, 1999 in anticipation of his or her subsequently going non-resident, the property is deemed disposed of at FMV on emigration.

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SR & ED Action Plan Progress

Revenue officials and members of industry met in Montreal on January 27-28, 2000 to review the progress of administrative improvements to the SR & ED tax incentive program. Revenue's progress report to the SR & ED stakeholders is available at www.ccra-adrc.gc.ca/taxcredit/sred/stakehold-e.html.

At the first conference in Vancouver in June 1998, the industry participants, angry and frustrated with the program's administration, agreed on a 13-point action plan for improvement. Both industry and Revenue have since spent a great deal of time and effort to achieve those goals. The mood of cooperation at the recent conference reflected a recognition that progress had been made, albeit too slowly and leaving much to be done. Concern was also expressed that more representation from small and medium-sized enterprises is required. A number of draft papers were reviewed, including those on project definition, documentation, and a new dispute resolution mechanism. There was widespread agreement that the project definition paper

SHOE *by Jeff MacNelly*

needed only minor changes before implementation, but a gulf still seems to exist between industry and Revenue science advisers on the documentation standard required to support an SR & ED claim. The new dispute resolution mechanism process looked promising, and industry made design suggestions to the responsible committee. Other groups discussed progress on Revenue's pre-claim project review service and account executive model; both initiatives were favourably received, but there are some concerns that resource constraints may affect implementation. Both sides also discussed the need for a culture shift within Revenue to ensure successful implementation.

Both the minister and the assistant commissioner, Verification, Enforcement and Compliance Research Branch, said that the target completion date for the action plan is year-end 2000. Industry representatives on the action plan steering committee are also committed to this target. All involved recognize that much remains to be done.

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Offshore Funds Revisited

Under draft legislation of September 1999, and as amended in December 1999, a non-resident investment fund is generally not carrying on business in Canada solely because it engages a Canadian firm to provide portfolio management services, dealer services, or back-office services in relation to investments in securities. Some of the legislation's requirements may frustrate its purpose—to enhance the international competitiveness of Canadian service providers—because resulting business and legal concerns may ultimately restrict the universe of acceptable non-resident consumers of such services.

No more than 20 percent of a qualified fund's value may be owned by one investor that is not itself a qualified fund. A widely distributed fund's manager will not be able to establish qualification and—given its fiduciary obligation and concomitant intolerance of tax risks beyond its control—may prefer a non-Canadian service provider. In fact, many funds overstep this ownership test, but denying safe harbour to these funds, and thus the opportunity for Canadian residents to provide their services, does not serve any apparent policy objective.

If the Canadian service provider does not deal at arm's length with the promoter, it is prejudiced by a rule that then limits the safe harbour rule to a fund with an investment turnover rate of not more than three. The restrictive turnover rate is directed at tax avoidance, and thus the focus of the arm's-length test should be the service provider and the fund's beneficial owners, not its promoter. Arguably, other tax-avoidance issues are adequately addressed by the FAPI rules, the transfer-pricing rules, and GAAR.

A fund may invest only in qualified investments (QIs), originally defined as property other than specified property. The exclusion of shares of a corporation that derives at least 50 percent of its value from certain Canadian property, even if they were not taxable Canadian property to the fund, has been amended: such shares are now excluded only if the fund and all non-arm's-length persons reach a 25 percent ownership test. The December amendments also adopt an inclusionary definition of QI that does not include real estate in the permitted investments so enumerated. If the underlying concern is to ensure that a fund does not carry on business, a list of permitted investments is unnecessary: by definition, a non-resident investment fund can only undertake the investing of funds in property; it cannot carry on a business.

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Trust Proposals

In December 1999, revised proposals on trusts were issued. They contain several new measures designed to ensure that transfers to a trust cannot be used to inappropriately reduce tax.

■ If a beneficiary's interest is vested and may pass to persons appointed by him or her, it may be deemed disposed of immediately before death. If the trust borrows funds before then and makes a capital distribution, the value of the trust interest may be reduced by the liability. An FMV deemed disposition now occurs immediately after the distribution if its purpose is to avoid tax on the trust interest at death. Distributions made shortly before the beneficiary's death may be scrutinized in the future.

■ To avoid probate fees on death, assets may be rolled to a spousal trust or to a trust if there is no change in beneficial interest; individuals commonly transfer non-appreciated assets to non-spousal trusts or assets with gains that can be offset by losses. On the settlor or spouse beneficiary's death, there is no deemed disposition of non-spousal trust interests or assets, and the trust assets typically pass to their children, the residual beneficiaries. For a trust created after 1999, an individual at least 65 years old may roll property to a trust for his exclusive benefit of income and capital (an alter-ego trust) or for his and his spouse's joint benefit (a joint spousal trust) during his or their lifetimes. There is a deemed disposition on the death of the settlor or surviving spouse, respectively, which may be traded off for a disposition on the inbound transfer by adding children as discretionary beneficiaries during the parent's or parents' lifetimes.

■ If the rollover of property to a newly formed trust can be reasonably viewed as anticipating the individual's going non-resident, then the trust assets are deemed disposed of on that event. The rule is aimed at attempts to convert a capital gain subject to part I tax to a dividend subject only to part XIII tax.

■ Even if there is no change in beneficial interest, a partnership can no longer roll property to a trust as part of a series of transactions or events that includes the cessation of the partnership and a subsequent tax-free distribution of trust property to a former partner; the requirement of pro rata distributions of assets and liabilities for a tax-free dissolution of a Canadian partnership could have been circumvented by interposing a trust to make tax-free capital distributions.

■ A new rule denies a rollover to a trust that is a part of a series of transactions designed to defer the recognition of capital gains.

■ Property can be rolled to a trust on a qualifying disposition only if no consideration is received.

■ A transfer by a non-pre-1972 trust to a pre-1972 trust without any change in beneficial interest now eliminates the latter's graduated rates.

■ A bare trust that is an agent for the settlor-beneficiary is now excluded from the definition of "trust" and is ignored for tax purposes.

■ For transfers after December 23, 1998, applicable to 1998 and subsequent years, a person or partnership is deemed not to be a trust beneficiary, for example, solely because of a right as a shareholder of a corporation or a member of a partnership that is a trust beneficiary. A right arising as a consequence of intestacy or under the terms of a will or other testamentary interest of another beneficiary is also ignored; the latter seems to cover powers of appointment granted under a will to a beneficiary.

■ It is clarified that a non-resident's taxation year is calculated as for a resident and that a non-resident is a person for whom income is determined in accordance with the Act.

■ Canadian withholding tax now arises on the deemed disposition of property distributed to a non-resident beneficiary and on other trust distributions that would give rise to income for a Canadian-resident beneficiary.

■ A trust subject to a deemed disposition on a beneficiary's death now considers as proceeds only an insurance policy's cash surrender value.

■ If an employer transfers to an RCA property that may revert, it is clarified that double tax is avoided by the employer's not being taxed on the RCA's gains: the trustees must remit refundable tax on contributions and income.

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E-Commerce and Sales Tax

While authorities worldwide are studying the impact of e-commerce in general and on sales tax in particular, taxpayers and their advisers must make reasonable and timely tax decisions. Revenue's published comments are sparse.

Is a non-resident who sells goods and services to Canadian customers over the Internet carrying on business in Canada and required to register for GST? A 1998 non-confidential ruling says that a non-resident with no physical presence in Canada who operated a Web site to advertise its products need not register, even if the Web site had been housed on a server in Canada owned by the non-resident, not by a third party. The normal tests for analyzing the registration requirement seemed to apply, requiring a presence more substantive than the mere operation of a Web site dedicated to product advertising. However, whether and when a server constitutes a permanent establishment and the impact on non-resident registration is still under debate worldwide. (See "OECD on E-Business," *Canadian Tax Highlights*, November 23, 1999, at 81.)

Another issue concerns the classification of digitized products—for example, books, photographs, videos, and software—delivered over the Internet. Whether GST applies depends in part on whether the transaction is a supply of goods, services, or intangibles. Scant GST commentary exists, but a GST bulletin on software importation says that the electronic transmission of software is a supply of intangible property. A 1997 non-confidential ruling says that the supply of information—commodity prices, in that case—over the Internet is a supply of a service.

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Australian Ombudsman Review

The Australian ombudsman's office established a specialist service to investigate complaints concerning the Australian Tax Office (ATO) by taxpayers claiming they

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had been disadvantaged by the ATO's decisions. Of some 3,000 complaints received in 1998-99, 1,100 related to a particular R & D scheme challenged by the ATO; ultimately, 1,600 related complaints were received. In June 1999, the ombudsman's office released a report on its investigation.

The ombudsman found that the ATO's interpretation of the law was reasonable and its actions were not retrospective, unjust, or oppressive. The fact that a public position paper was not provided earlier did not amount to defective administration. Under the principles of self-assessment—repeatedly referred to in the report—participants were not entitled to assume that the ATO's silence indicated tacit approval. Inaction and delay in providing a private letter ruling to one taxpayer amounted to defective administration, but the principles of self-assessment did not absolve other participants from their obligation to seek certainty about the arrangement. The report went on to note that future investors in tax-effective schemes will benefit from a new product ruling system allowing promoters to apply for an opinion in advance of the product's release to the public. The ATO was entitled to prospectively withdraw previously approved reductions of source deductions.

A ruling relied on was distinguished on the facts by the tax commissioner. The ATO has said that rulings are not legally binding but are followed unless there are good and substantial reasons to the contrary: for example, the approach may no longer be considered appropriate because an administrative practice is being exploited by taxpayers as a means of tax avoidance. The ombudsman's report referred to a recent Federal Court decision that concluded that a public ruling is binding in relation to a class of arrangements, but not in relation to its principles or the reasoning stated in it.

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Foreign Tax News

OECD

The tax section of the OECD's *Guidelines for Multinational Enterprises* has been revised in draft to clarify that MNEs must pay taxes in any jurisdiction they operate in and provide tax authorities with all relevant information. A host country can only require information that directly aids in ensuring tax compliance. The importance of transfer pricing in determining tax obligations is also described. A new section calls on MNEs to help combat bribery by using straightforward tax bookkeeping with no hidden accounting. The guidelines can be accessed at www.oecd.org.

The Committee on Fiscal Affairs elected the United Kingdom's Gabriel Makhlouf as its new chair (replacing Joseph Guttentag), Peter Simpson of Australia as deputy chair, and Frank Mullen of Ireland and Vieri Ceriani of Italy as vice-chairs.

Venezuela

New mining taxes include a progressive surface tax, an exploitation tax based on monthly production, and a production tax payable on extraction of a mineral. The head of the tax office wishes to eliminate the current treaty with Canada in favour of one similar to theirs with the United States: Canadian officials are expected to arrive in February for discussions.

Tax Havens

The **Bahamas** is introducing new legislation to amend its financial laws, following international concerns over harmful tax competition. Initiatives include greater transparency of business and financial industries, increased cooperation with tax evasion investigations by OECD countries, more disclosure by international businesses (including the names of directors), and implementation of an income tax system. **Liechtenstein** has taken issue with being labelled a tax haven. Its tax structure has not changed during the past 50 years; it is the increase in tax rates over that same period in other European countries that has made Liechtenstein's tax system more attractive. The principality remains open to resuming discussions with the OECD on tax policy.

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