C A N A D I A N **T A X** *Highlights*

Editor: Vivien Morgan, LL.B.

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Ontario RST on Software

Earlier this year Ontario Finance released Ontario Sales Tax Guide 650, "Computer Programs and Related Services," which explains how Ontario retail sales tax (ORST) applies to computer programs and related services, and which is intended to replace all commentary since the May 1997 budget. The guide defines and describes exempt "custom computer programs" and comments on the ORST status of sales to non-residents, computer programs from modules, and computer program licences.

The guide is the first Finance publication that addresses the taxable and non-taxable components of software consulting and implementation projects, an issue of longstanding concern for the industry. Generally, hands-on services such as installation and configuration remain taxable; other services—such as data management, training, and some consulting services—may qualify for exemption. Suppliers should therefore analyze their software consulting and implementation projects to segregate services that qualify for exemption under the new guidelines: if invoices do not segregate taxable and non-taxable services, the entire bill may be taxable.

The ORST status of charges for remote access to computer programs is potentially controversial. The guide states that ORST applies to the use of a taxable computer program, or any taxable service provided to the program, based on the location where the computer program resides. Thus, if a taxable program is installed on a computer or server located in Ontario, ORST applies to any access fees charged to customers, wherever located. If the program is installed on a computer or server located outside Ontario, ORST does not apply to any access fees charged, provided that customers cannot download the program. Finance's interpretation appears to contradict one of the basic principles of the ORST: tax should apply based on consumption or use within the province. One wonders whether Ontario-based servers will become a thing of the past.

Although the guide is a useful first step in providing much-needed information to the software industry, many contentious issues remain. The May 2001 Ontario budget acknowledged the need for "simpler and more effective definitions and rules." Consultations promised in the budget recently took place; it is hoped and expected that further developments will occur in the near future.

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No Disavowal of Chosen Form

In a recent field service advice letter, the IRS concluded that a US sub (USco) could deduct as interest for US tax purposes a payment made indirectly via a US limited liability company to its foreign parent, a taxable Canadian corporation, even though the Canco treated the payment under its tax rules as a dividend (FSA 200146013, 2001 TNT 223-14). This is good news, and is of particular interest to Canadian taxpayers that had or have in place double-dip structures to finance their US active business operations.

The IRS position in the FSA is that the ostensibly inconsistent characterization by the parent under non-US tax law and the US sub under US tax law, although relevant, is not a controlling factor in determining the US tax treatment of the payment for USco. (This coincides with the US Tax Court's position, albeit in a different fact pattern, in *Coleman*, 87 TC 178 (1986).) A key issue that the IRS considered was whether the substance of the transaction differed from its form. The IRS specifically concluded that the foreign parent's characterization of the payment as a dividend out of exempt surplus was not determinative of whether the USco was entitled to deduct the payment as interest.

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However, a key determinant was the fact that USco consistently treated the funds received indirectly from the parent as a loan and never took a contrary position on a US tax return, in the application of US withholding taxes, or otherwise.

Recent IRS administrative guidance and several litigated cases demonstrate heightened IRS scrutiny of cross-border financing transactions. This enforcement trend could result in significant financial exposure for companies: for example, the complete disallowance of US interest expense deductions (see *Laidlaw*, TC Memo 1998-232) or the imposition of a sizable US withholding tax liability (see *Del Commercial*, 251 F.3d 210 (DC Cir. 2001), affirming TC Memo 1999-41).

The FSA shows that the IRS continues to develop a high level of sophistication in reviewing cross-border financings, which IRS exams frequently challenge on both technical legal theories and fact-based grounds. Canadian companies can nonetheless effectively manage the risks and continue to implement tax-effective strategies that make business sense and keep them competitive if they respect thoughtful front-end planning and robust business and tax-technical implementation.

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FAPI: The Goods on Goods

Paragraph 95(2)(b) applies to services provided by a controlled foreign affiliate (CFA), if the amount paid or payable therefor is deductible from the income of a business carried on in Canada by any person (or a person related thereto) to whom the affiliate is a CFA. An exception for services involving the transportation of goods may soon be clarified.

Services covered by the rule are deemed to comprise a separate non-active business; consequently, the services income is FAPI. The underlying policy appears intended to deter taxpayers from eroding the tax base by diverting income to a CFA via the payment for services rendered by it for the benefit of a related Canadian resident. Certain activities are carved out from constituting services, including the transportation of persons or goods (paragraph 95(3)(a)). As a matter of policy, such activities performed within Canada are taxable under subsection 2(3) and do not offend paragraph 95(2)(b) if performed outside Canada; there is no erosion of the tax base or diversion of income from Canada, because their very nature requires performance abroad. This distinguishes the transportation of persons or goods from services for which the situs of performance is a matter of choice.

In an age in which communication and e-commerce are extremely important, electricity and electronic signals are critical "transported" commodities. Does the exception for "transportation of persons or goods" encompass the transmission of electricity and electronic signals along a transmission system located outside Canada? Dictionary definitions of "transportation" are broad and include "the act of conveying or the process of being conveyed." Goods and chattels are also broadly defined as "all kinds of personal property." Electricity and electronic signals are personalty, not realty. Thus the plain meaning of "transportation of goods" is very broad and may include the transmission of electronic signals along a transmission line, as adopted by the TCC in *Pepper*: "[I]n some contexts, the word 'transport' might well include the moving of electrical energy from one place to another by means of wires and related equipment." Various cases have considered whether electronic communication signals constitute goods for purposes of the M & P income tax deduction. In the leading case of *Canadian Wirevision*, the FCA held that goods included only tangible movable property because the statute required that the goods be "for sale or lease": the court said that electronic signals cannot be sold but rather are received. The FCA distinguished electricity and electronic signals and held that radio and television signals, though electric currents, are never referred to as goods. (In a decision under the old federal sales tax rules, the parties conceded that electricity was a good because of specific legislative mention.)

In light of this uncertainty, Finance recently indicated that it is prepared to recommend an amendment to the minister to ensure the exclusion from paragraph 95(2)(b) of the transmission of electronic signals or electricity on a transmission system located outside Canada. Canadians with foreign subs that provide such services—such as communication signals for the Internet and other means of telecommunications and electricity—through a transmission system located outside Canada and owned by a CFA will be assured that the CFA's resulting income is not FAPI. Such an outcome is consistent with prudent economic policy. It would be inequitable and harsh if a Canadian communications company could deduct payments to a third-party US subcontractor for the transmission of signals within the United States, but would be taxed on the income as FAPI if it vertically integrated and acquired the third-party supplier—then a CFA—when by virtue of the very nature of the services they could not be performed elsewhere.

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COLD BUT HOSPITABLE

The latest comparison of tax burdens across the provinces contains no surprises. In 1999, the latest year for which information is available, Quebec had the highest burden and the territories the lowest. Alberta had the lowest provincial tax burden.

There are a number of ways of comparing tax burdens, but the ratio of total tax collections to gross domestic provincial product (GDPP) is the least ambiguous means of comparing all types of taxation at all levels, and reflects not only different rates but also the effect of different income or consumption patterns on the tax actually paid in each region. The information is available only in Statistics Canada's provincial economic accounts; the figures for 1999 were released late in the fall of 2001.

Taxes as a Percentage of GDPP, 1999

Quebec	40.5
Prince Edward Island	37.7
Ontario	37.5
Manitoba	36.1
Nova Scotia	35.8
British Columbia	35.1
New Brunswick	33.5
Newfoundland	33.3
Saskatchewan	33.3
Alberta	28.9
Yukon	26.8
Northwest Territories (1998)	25.4
National average	36.4

Federal tax rates are uniform across the country, with the exception of personal income tax rates in Quebec. Average incomes, however, vary considerably from province to province. Thus, although the progressive federal income tax system contains uniform rates for all citizens, it imposes a greater effective burden in provinces with high average incomes. While detail is available on the tax collected by each level of government, the results may be misleading. Quebec residents receive an abatement of federal personal income tax because Quebec opted out of a number of joint programs in the 1960s and accepted income tax room instead of cash payments from Ottawa. Thus Quebec's provincial tax burden is higher, but the federal burden is lower. There is no uniform distribution of provincial and local responsibilities and tax powers across the country; so, for example, local property tax collections represented only 1.1 percent of GDPP in Prince Edward Island and 4.1 percent in Ontario.

Total tax collections in Quebec were equivalent to 40.5 percent of GDPP in 1999, just slightly higher than in 1992. In Alberta, tax collections of all levels of government were equivalent to only 28.9 percent of GDPP, down from 29.3 percent in 1992. The average for all provinces and territories amounted to 36.4 percent of GDPP in 1999, almost the same as the 36.3 percent recorded in 1992, but down marginally from the figures reported for 1997 and 1998. The 1999 tax burden in the Yukon was equivalent to only 26.8 percent of GDPP; in the Northwest Territories, the tax burden was equivalent to 25.4 percent of GDPP in 1998, the latest year available.

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AVOIDING PROBATE FEES

New types of Canadian trusts permit Canadian residents to transfer property in trust on a tax-deferred basis and avoid probate. If the Canadian resident is a US citizen or if the property is US-situs, such as real estate, the potential US tax implications could trap the unwary.

For example, if a 70-year old single US-citizen Canadian resident transfers US real estate to a trust that during his lifetime he can amend or revoke, and if only he is entitled to income and capital distributions, the trust is a grantor trust for US income tax purposes. The transfer to the trust is not a taxable event, and he (not the trust) remains taxable on any income attributable to the property whether or not distributed. Because the trust is revocable, there is no completed gift at the time of the transfer, and no gift tax arises. On his death, the property's value forms part of his taxable estate for US estate tax, and Canadian income tax on the property's accrued gains is triggered. Assuming that the capital gain is reported on the trust's Canadian return rather than the personal terminal return, a credit for the tax does not offset the US estate tax. Double tax relief under the Canada-US tax treaty does not apply. The trust becomes a foreign non-grantor trust, and the US foreign non-grantor tax reporting and compliance regime applies to any US beneficiaries.

There can also be adverse US tax implications if a married US-citizen Canadian resident transfers property to a joint spousal trust and his wife is a Canadian-citizen Canadian resident. If the trust provides that all income must go to either spouse during their lives and no one else can receive trust income or capital, the trust is a grantor trust and no US income tax applies at the time of transfer. But US gift tax may apply at the time of transfer or distributions. If the trust is irrevocable, there is a gift of the actuarial value of the non-US-citizen

survivor's interest in the trust; if not, the value of actual distributions constitutes gifts. Similarly, estate tax implications arise, raising questions as to whether the property qualifies for a marital deduction under the US qualified domestic trust rules or for a marital credit under the treaty.

In this relatively new planning area, the full range of US tax issues should be considered: the trust formation, income realized in the trust, trust distributions, interaction of US estate tax and Canadian income tax at death, the availability or possible loss of treaty benefits, and US foreign non-grantor trust rules that create compliance and reporting issues for US beneficiaries.

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Accounting for Tax Updates et al.

In the last year the federal and provincial governments have announced significant corporate tax rate reductions scheduled to take effect in 2001 and later. The multiplicity of changes make it increasingly difficult to track when the reductions can be booked for accounting purposes under section 3465 of the *CICA Handbook* according to Canadian GAAP.

Section 3465 of the *Handbook* requires a tax rate change to be "substantively enacted" before it is reflected in a corporation's financial statements:

> Persuasive evidence that a change in tax law or tax rates is substantively enacted would usually exist only when the proposed change is specified in sufficient detail to be understood and applied in practice, has been drafted in legislative or regulatory form, and has been tabled in Parliament or presented in Council.

The CICA says (in Emerging Issues Committee bulletin EIC-111, re-released October 31, 2001) that a change is "substantively enacted" when a tax bill containing the detailed legislation is tabled for first reading in Parliament or the provincial legislature, except in a minority government situation. In that case the test is more stringent and requires the enabling legislation to have passed third reading in the House of Commons, for example. If there is a majority government, tax rate cuts can apply to periods ending on or after the date of the relevant bill's first reading: if a bill is tabled for first reading on June 30, the tax rate cuts can be reflected in results for the quarter that includes June 30. Accounting for staged effective dates of revised tax rates, accounting for substantively enacted tax rates in interim financials, and other complexities are discussed in detail in the amended version of EIC-111.

General Corporate Tax Rates: Status of Legislation[a]

Jurisdiction	General tax rate (%)	Effective	Bill number	First reading	Royal assent
Federal[b]	28.12	Jan. 1/01	C-22	Mar. 16/01	June 14/01
	26.12	Jan. 1/02			
	24.12	Jan. 1/03			
	22.12	Jan. 1/04			
BC	16.5	Pre-2001	n/a		
	13.5	Jan. 1/02	2	Jul. 30/01	Aug. 16/01
Alta.[c]	15.5	Pre-2001	n/a		
	13.5	Apr. 1/01	8	May 1/01	May 28/01
	11.5	Apr. 1/02	None tabled		
	10.0	Apr. 1/03			
	8.0	Apr. 1/04			
Sask.	17.0	Pre-2001	n/a		
Man.	17.0	Pre-2001	n/a		
	16.5	Jan. 1/02	47	Jun. 26/01	Jul. 6/01
	16.0	Jan. 1/03			
	15.5	Jan. 1/04			
	15.0	Jan. 1/05			
Ont.[d]	14.5	May 2/00	72	May 2/00	Jun. 23/00
	14.0	Jan. 1/01			
	12.5	Jan. 1/02[e]	45	May 9/01	Jun. 29/01
	12.5	Oct. 1/01	127	Nov. 6/01	Dec. 5/01
	11.0	Jan. 1/03	45	May 9/01	Jun. 29/01
	9.5	Jan. 1/04			
	8.0	Jan. 1/05			
Que.[f]	9.04	Mar. 15/00		Mar. 14/00	Jun. 16/00
	8.9	Mar. 15/03			
NB	16.0	Jan. 1/01	61	May 11/01	Jun. 1/01
NS	16.0	Pre-2001	n/a		
PEI	16.0	Pre-2001	n/a		
Nfld.	14.0	Pre-2001	n/a		

[a] All rates must be prorated for taxation years that straddle the effective dates. [b] Considered substantively enacted Dec. 13/00. [c] The M & P rate has the same effective April 1/01 date as the general rate. [d] The M & P rate cuts are included in the same bills as the general rate cuts. [e] On Oct. 1/01, Ontario announced that the rate reductions scheduled for Jan. 1/02 would apply as of Oct. 1/01. [f] 1.6% youth fund contribution is in effect for 3 years.

The table captures all relevant information for these general corporate tax rate reductions: the effective dates of the rate change, the bill number of the tabled legislation (if applicable), the dates that the bill received first reading and royal assent in the federal and provincial legislatures, and any rate reductions for M & P. (The revised EIC bulletin does not change the EIC's previous position that the federal corporate tax cuts are substantively enacted as of December 13, 2000. See "Accounting for Tax Cuts," *Canadian Tax Highlights*, January 23, 2001, at 8.)

Departure tax update. The CCRA is still working on its administration of departure tax security procedures.

We understand that six regional officers located across Canada have been appointed to deal with and approve departure tax security. The taxpayer's last address in Canada determines which regional representative is responsible for the taxpayer's case.

The CCRA is working on standard forms to be completed in the departure year that may include a standard election to post security. The CCRA says that it expects to release these forms before the end of April 2002. Until the forms are available, departure tax returns should be filed with something on the jacket to indicate the nature of the return, such as "migration rules" or "departure tax." The return should include an election to post security, if required, and any correspondence with the CCRA on the matter. For 2001 and prior years, the deadline for posting security is April 30, 2002; otherwise, the deadline is April 30 of the year after departure. The Act indicates that security must be in place by the April 30 deadline, but if it is difficult to obtain security by then, the CCRA says that the regional representative may be able to provide an extension.

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US-UK Treaty a Trendsetter?

On ratification, the newly signed US-UK income tax treaty will replace the existing treaty, which has been in effect for more than 20 years.

Zero dividend withholding. The new treaty limits the dividend-withholding rate to 0 percent for certain 80 percent shareholders, to 5 percent for certain 10 percent shareholders, and to 15 percent in all other cases. Thus the most-favoured-nation (MFN) clause in the protocol to the current Mexico-US treaty may lower withholding on certain dividends to zero. On September 27, 2001, the United States and Australia also agreed to reduce the withholding rate to 0 percent for dividends paid to 80 percent shareholders. Canada and the United States have been negotiating a treaty protocol for some time; at a recent conference, a Finance representative said that withholding on interest would be eliminated for arm's-length debts. The elimination of Canada-US withholding on interest and the potential elimination of dividend withholding under the Mexico-US treaty would reduce barriers to cross-border investment within North America.

Under the EU parent-subsidiary directive, companies in the European Union have been able to pay dividends across borders without withholding taxes. Finance officials have indicated, through informal discussions, that Canada has not accepted a 0 percent withholding tax on dividends with the United States and that the issue has not been covered in treaty discussions. A US Treasury representative recently commented that the United States "will consider similar provisions [the 0 percent provision in the US-UK treaty] with other countries on a case-by-case basis." With respect to Canada, the representative said, "[O]ur close economic ties and history of cooperation on information exchange make a particularly strong case for such consideration."

Other changes. Consistent with the US model treaty and other recent treaties negotiated by the United States (including the Canada-US treaty), the new US-UK treaty contains a comprehensive limitation-on-benefits article that generally restricts the availability of treaty benefits. But the new treaty goes further than the existing Canada-US treaty and likely sheds light on some of the new circumstances that will also be dealt with in the Canada-US treaty protocol under negotiation. The new treaty restricts the availability of treaty benefits for payment of certain types of income in a conduit arrangement, defined in part as a transaction or series of transactions of which one of the main

SHOE by Chris Cassatt and Gary Brookins

purposes is the obtaining of enhanced treaty benefits. Consistent with recent comments from the OECD, the business profits article in the new treaty clarifies that such profits attributable to a permanent establishment (PE) include only profits derived from the assets used, risks assumed, and activities performed thereby. A number of provisions address characterization differences between the treaty partners. Income or gain derived through a fiscally transparent entity is only considered derived by a resident of one of the states if for purposes of taxation in that state it is treated as the resident's income or gain. The United Kingdom denies certain dividend-related tax credits if it treats the dividends as being owned by a UK resident and the United States treats the same dividends as being owned by a US resident—for example, so-called repo transactions. If a company is a US-UK dual resident, the competent authorities will attempt to determine how the new treaty should apply.

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Consultant an Employee?

The SCC in *671122 Ontario v. Sagaz* held that a consultant was an independent contractor and not an employee. The decision adopted the FCA's approach in *Wiebe Door*, the leading tax case on this issue.

671122 Ontario was replaced as Canadian Tire's principal supplier of synthetic sheepskin seat covers because the marketing consultant of a rival supplier, Sagaz, paid a bribe to the head of Canadian Tire's automotive division. In order to address whether the new supplier was vicariously liable for the wrongful action of its consultant, the SCC first determined whether the consultant was an employee or an independent contractor. The most common relationship that attracts vicarious liability is the relationship between an employer and an employee, because of the element of control that the employer has over its employee: "If the employer does not control the activities of the worker, the policy justifications underlying vicarious liability [are] not satisfied."

Because the distinction between an employee and an independent contractor affects legal rights in a number of situations, including income taxes, the SCC found much of the case law helpful, even though it did not touch upon vicarious liability. The SCC said that the FCA in *Wiebe Door* thoroughly reviewed the relevant case law, setting out various tests to help determine whether a worker is an employee. After reviewing the *Wiebe Door* analysis, the SCC agreed with that decision that a persuasive approach was taken in the English case of *Market Investigations.* That case said that the central question is whether the person engaged to perform the services performs them as a person in business on his own account. The SCC concluded that the level of control the employer has over the worker's activities is always a factor in this determination, but other factors include whether the worker provides his or her own equipment, whether the worker hires his or her own helpers, the degree of financial risk taken by the worker, and the worker's opportunity for profit in the performance of his or her tasks. The SCC also said that these factors are not exhaustive and there is no set formula for their application: the relative weight depends on the particular facts.

In *671122*, the SCC found that evidence suggesting employee status was outweighed by compelling points indicating independent contractor status: the consultant had its own offices; it paid all its own costs of conducting its business, including travel expenses, commissions, and other compensation of its sales employees; it remained free to carry on other activities and represent other suppliers, provided that it did not take on any competing lines of business. "Central to this inquiry is the extent of control" that the new supplier had over the consultant: the new supplier did not either specify or control how much time the consultant was to devote to representing them in maintaining their goodwill with Canadian Tire, or to performing in-store services. Therefore, although the supplier controlled what was done, the consultant controlled how it was done and how much time was devoted to it.

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Ontario Professional Corps

Incorporation in Ontario is now a reality for architects, CAs, CGAs, CMAs, and lawyers, and is expected soon for chiropractors, dentists, doctors, and veterinarians. (Engineers were already eligible.) Section 3 of the OBCA and the professional's governing regulations and bylaws will determine filing and other requirements and restrictions; generally, the governing body must issue a certificate authorizing the use of a professional corporation. Incorporation triggers many advantages and issues.

■ The first $200,000 of active business income attracts the small business deduction (SBD) and is taxed at 19.12 percent. The sharing of an SBD may yield little advantage for associated companies or large partnerships. Sole practitioners' corporations retaining after-

tax funds benefit the most. The OBCA restricts direct and indirect share ownership; governing bodies determine whether a professional may use a wholly owned holdco.

■ A non-calendar year-end may be chosen; instalments are not paid in the first year.

■ Accrued bonuses are deductible if paid within 179 days of year-end. An employee profit-sharing plan may defer tax longer if the accrual is paid within 120 days of year-end. (Only EHT is withheld.) Years ending September to December can reap additional deferral.

■ Remuneration may be salary or dividends. Only a professional may be a shareholder or director (architects need hold only a majority of each class of shares or directorships); others cannot income-split via dividends or directors' fees, but may be employees and receive reasonable salaries.

■ The corporation can expense more than two conventions, own group sickness and income maintenance policies and life insurance, set up a scholarship plan for employees' children, and contribute to a top hat pension plan or a retirement compensation arrangement (and withdraw funds when tax rates are lower).

■ The $500,000 CGE exemption may be claimed on sale or death (if there is no spousal rollover). The deemed disposition of shares, not assets, facilitates estate administration. A $10,000 death benefit is deductible if paid to the surviving spouse, to whom it is not taxable.

■ Limited liability exists except for professional malpractice (for example, a lease, a non-guaranteed bank loan, and trade payables). A professional's loans to the corporation can be secured.

■ Costs include the expense of forming and maintaining the entity; the loss of 10-year 1995 reserve and 1971 accounts receivable reserve; and EHT if associated group payrolls exceed $400,000.

■ Assets may be rolled at tax cost net of liabilities, at $1 for goodwill (unless purchased or prior $100,000 CGE), and at cost of supplies. Rolled-in WIP may be excluded (section 34). A section 22 election is advised for accounts receivable.

■ A related management company owned by a spouse(s) or children or a trust(s) and managing the practice may be converted to a professional corporation: transfer the shares to the professional, roll goodwill in, and change the name. A spousal rollover or the CGE may apply. Query whether dividends paid on shares received from the spouse are attributed back. In the health sciences field, a corporation that provides GST-exempt technical services (such as hygiene services to a dental practice) and benefits from the SBD remains attractive unless associated with a professional corporation.

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Only in Quebec, Part 2

A recent change to the Quebec Income Tax Act removed the Quebec AMT (QAMT) addback of the stock option benefit deduction afforded to Quebec-resident taxpayers. Accordingly, for top marginal-rate Quebec-resident individuals, the realization of qualifying stock option benefits does not automatically lead to a QAMT liability. Unfortunately, similar treatment for QAMT purposes has yet to be extended to capital gains.

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Customs Modernization

Customs Bill S-23, the "first step in modernizing Canada's border program" per the CCRA, received royal assent on October 25, 2001, effective on a day to be fixed by order of the governor in council. Tax practitioners dealing with Canada's customs and international trade rules or the cross-border movement of goods should familiarize themselves with the new program, but should note that it was conceived before September 11, 2001 and that it may prove to have a short shelf life over the next few months in light of debates with the United States over our common border.

Bill S-23 is the first step in the CCRA's customs action plan (CAP), formalized April 7, 2000 in the document "Investing in the Future: The Customs Action Plan 2000-2004." (CAP was blueprinted in the fall of 1998.) CAP nudges Canada into modern management of border and trade policy, calling for a change in focus from a transaction-by-transaction methodology to self-assessment and voluntary compliance. CAP focuses on a risk-management system supported by a greater use of technology and proposes to streamline trade and business travel under its guiding principles: pre-approval, advance information, and self-assessment. In the CCRA's view, CAP allows it to "target sectors of higher or unknown risk, thereby ensuring more effective protection for Canadians."

Bill S-23 generally amends the Customs Act and related legislation to allow the CCRA to implement CAP initiatives.

Customs self-assessment. CSA offers commercial importers a quicker (and in the CCRA's view, a more dependable) way to transfer goods across Canada's

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border and allows the CCRA to focus its resources on "high- or unknown-risk" shipments by expediting the release of "low-risk" goods at the border when low-risk importers identify themselves. CSA enforcement relies on profiling, audit, and border spot checks. Importers will use their own books and records to account for imported goods to the CCRA, not forms completed solely for CCRA purposes. Thus CSA moves the CCRA's focus away from transaction-by-transaction policing and toward more after-the-fact self-assessment and a voluntary compliance system.

Carrier re-engineering. This proposal arms the CCRA with arguably more effective tools for managing risk. For example, Bill S-23 amendments will assist the CCRA in intercepting contraband shipments or shipments that pose health or safety risks, but allow for the timeous clearance of legitimate, low-risk shipments. Shippers must electronically transmit pre-arrival data to the CCRA to allow identification of "high- or unknown-risk" shipments.

Administrative monetary penalty system. AMPS—one of the more publicized CAP initiatives and one of the more notable elements of Bill S-23—is designed to encourage businesses and travellers to comply with trade and border legislation. It allows the CCRA to respond to non-compliance in a variety of ways, ranging from warnings to fines. AMPS allows a more progressive response to non-compliance, with penalties proportionate to the compliance history of travellers, importers, and service providers. Time will tell whether AMPS develops into just another convenient source of government revenue.

Expedited passenger processing system. EPPS allows pre-approved travellers to clear customs and immigration at airports quickly, using automated kiosks to confirm their identity and their EPPS membership. EPPS also expands the so-called CANPASS family of permit-based programs and will help pre-approved, low-risk travellers cross the Canada-US border more quickly.

Other administrative upgrades. Bill S-23 includes a host of other measures aimed at bringing the Customs Act administration into step with the Income Tax Act and the GST provisions of the Excise Tax Act. These measures include changes to time limits for administrative review appeal provisions and limited extension rights; third-party redress through a simple pre-judicial review process; harmonization of collection mechanisms, including garnishment and joint liability; and disclosure requirements for commercial transportation companies, including drivers, crew, and passenger information. Legislative measures allow for advance rulings on the tariff classification of goods and expand appeal rights.

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Foreign Tax News

OECD

On November 14, the report on harmful tax competition was finally released. Listed jurisdictions have until February 28, 2002 to indicate willingness to comply, and must complete that process by December 31, 2005 or face countermeasures such as economic sanctions. The full text is available at http://www.oecd.org, or from the Foundation's library. The four modifications to the report are (1) compliance extension to February 28, 2002; (2) application of the same compliance time frame for tax havens and OECD countries; (3) removal of the "no substantial activities" criterion; and (4) extension for delivery of an implementation plan by a committed jurisdiction from 6 to 12 months.

United Kingdom

In response to global warming, the United Kingdom has imposed a new climate change levy to reduce industrial greenhouse gas emissions with a combination of increased energy costs and reduced tax rates for energy-saving schemes. The tax is part of a fiscally neutral package.

Miscellaneous

The newly elected government in **Denmark** has declared a moratorium on new taxes from 2003. The president of the **United States** signed a bill to extend the Internet Tax Freedom Act moratorium by two years.

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