

Introduction to the Tax Risk Management Guide

September 2016

Welcome to the inaugural edition of *CPA Canada's Tax Risk Management Guide* (the *Guide*), formerly *CPA Canada's Tax Practice Manual*.

Following the merger of CGA Canada, CMA Canada and CICA into CPA Canada, the authors, together with Gabe Hayos, FCPA, FCA, ICD.D, Vice-President, Taxation of CPA Canada, members of the CPA Canada publications group and contributors who are specialists in various areas have worked to rebrand and completely revise the *Tax Practice Manual*. The new *Guide* is focused on minimizing tax risk for tax professionals.

In light of this focus, risks to a tax professional's practice have been identified in a feature, **Risk identified**, which has been included throughout most chapters in this *Guide*.

A brief introduction to each of the chapters has been included here.

Chapter 1 Deadlines and Penalties

Much of a tax practice revolves around meeting deadlines, for example, the filing of income tax returns. This chapter focuses on some of the most common filing and remittance deadlines and some filing exceptions and deadline variances are also discussed, followed by corresponding penalties for late filing and also penalties for non-compliance when electronic filing is required.

Chapter 2 Self-Assessment Tools

This new chapter introduces the *Tax Risk Questionnaire* (the TRQ) which has been developed as a self-assessment tool for small and medium-sized firms to identify risk issues in their tax practice, and to review the risk management tools, policies and procedures available to manage those risks, including references to sections of the *Guide*, which discuss these risks. The risk areas addressed in the TRQ are based primarily on the claims and occurrences filed by practices with the Association of Insured Chartered Accountants Services Inc. (AICA) and releases and publications of Canada Revenue Agency (CRA).

Chapter 3 Tax Service Responsibility

Proper standards must be consistently followed in a tax practice to minimize the firm's exposure to risk. This chapter is intended to help tax professionals understand those responsibilities and provide principles and guidance for minimizing exposure to the risks of malpractice claims.

This chapter examines professional standards that apply to a tax practice, the importance of engagement letters, factors to consider when giving an opinion, the scope of civil penalties, areas of frequent claims, minimizing the risk of claims, and reporting claims to the insurer.

A discussion on ethics and a link to the *CPA Canada eLearning Course on Ethics for Tax Practitioners* has been included in this chapter.

Chapter 4 Links to Important Concepts

The purpose of the *Guide* is to provide information on some of the important risks associated with operating

a tax practice as well as recommendations on ways to minimize those risks.

The *Guide* is not designed to teach basic tax concepts. There are other CPA Canada publications which provide this information, so it is not necessary to duplicate it in the *Guide*. However, in an effort to assist members to find reliable information, this chapter provides links to CPA Canada publications and other publications that discuss these important concepts.

This chapter was written to include references to the *CPA Canada Canadian Tax Principles*, 2016 Edition.

Chapter 5 Dealing with the CRA

Assisting a client in making representations to the Canada Revenue Agency (CRA) or other tax authorities is a special type of engagement requiring specific skills and knowledge. These representations can come at the time of an audit, a reassessment, an appeal to the Tax Court of Canada or when a client wants to make arrangements to pay an outstanding tax liability. This chapter discusses the CRA's procedures and organization and how the tax professional can assist their clients. While most tax disputes are dealt with by the CRA, the discussion in this chapter also applies to provincial revenue authorities and goods and services taxes.

This chapter has been written to focus on risk management issues.

Chapter 6 Appeals to Tax Court

The Tax Court of Canada has exclusive jurisdiction over the trial of appeals under the *Income Tax Act (ITA)*, the Canada Pension Plan, the *Petroleum and Gas Revenue Act*, Part 4 of the *Employment Insurance Act*, the *Old Age Security Act* and Part IX of the *Excise Tax Act* dealing with the GST/HST (some GST/HST related issues for imported goods must be appealed to the Canadian International Trade Tribunal). Trials are held in many locations across Canada.

There are two procedures available in The Tax Court of Canada — the Informal Procedure and the General Procedure. The purpose of this chapter is to discuss the tax practitioner's role in representing clients in Tax Court. While this chapter deals with the procedures of the Informal Division of the Tax Court of Canada, reference is made to the General Procedure as the rules there can be a useful guide for representation in the Informal Division.

Chapter 7 Researching Tax Law

Tax professionals are governed by and work within the framework of the *Income Tax Act* as well as various other statutes and case law. To be able to provide good advice, a tax professional must be conversant with the latest developments in the law. The constant changes and increasing complexity make the timely response to a client's questions a challenge.

Chapter 8 Taxpayer Relief Provisions, Collections and Third-Party Liability

This chapter focuses on Taxpayer Relief Provisions regarding interest or penalties payable under the *Income Tax Act*, the role of CRA Collections in collecting the revenues for the Government of Canada, and third-party liability when a taxpayer cannot pay their tax liabilities.

Chapter 9 Access to Information Act and Privacy Act

The *Access to Information Act* and the *Privacy Act* are two pieces of legislation that, while used infrequently, can assist a taxpayer in some situations. This chapter provides a framework of the legislation and then outlines how the legislation can be used to assist taxpayers in the appeals process. The purpose of the *Access to Information Act* is to provide public access to certain information that is under government control. Similarly, the *Privacy Act* protects the privacy of personal information that is under government control and provides an individual with the opportunity to access their own personal information.

Chapter 10 Advance Tax Rulings

An Advance Tax Ruling or a Technical Interpretation from the Income Tax Rulings Directorate (the Directorate) can be obtained when a tax professional is uncertain of the tax consequences of a proposed transaction. The Directorate is the centre of income tax expertise within the CRA. The application must be made well in advance of the transaction date in order to obtain the ruling for the date of the proposed transaction.

Chapter 11 Tax Return Preparation and CRA Electronic Services

This new chapter, which combines the issues discussed in the previous chapters 11 and 12 of *CPA Canada Tax Practice Manual*, has been written to identify risks associated with the preparation of tax returns, including individual income tax returns, corporate income tax returns, trust returns and information returns as well as responsibilities of efilers and electronic services available through the CRA.

Chapter 12 Deceased Taxpayers

This new chapter surveys risks identified when a taxpayer dies. Tax professionals may be asked by the executors of an estate to prepare the income tax filings for a deceased taxpayer and to provide post mortem estate and tax planning advice. In order to properly provide these services, there needs to be a solid understanding of the specific provisions under the *Income Tax Act* that apply when an individual passes away.

Chapter 13 Remission, Rectification and Rescission Orders

Remission orders are provided for under the *Financial Administration Act* but are frequently overlooked in tax practice. When all else fails, tax professionals can use this provision to apply for an order from the Treasury Board to waive taxes.

Tax professionals should also consider rectification, which is a provincial court remedy to correct mistakes in the documentation of a transaction that has not reflected the intentions of the parties. If granted, the effect of the order is that the documentation will be changed to reflect the parties' intentions and the change will be binding not only on the parties but also on third parties, such as the CRA.

There are other remedies where rectification is not applicable. They are the common law remedy of *void ab initio* and the equitable remedy of remission. The common law remedy of *void ab initio* is available where there is a fundamental mistake going to the root of the contract and the contracting party obtains something other than what they have intended. The equitable remedy of rescission is available in cases where the contract is not void at common law. In equity, the mistake need not relate to the essential substance of the contract. If the court finds that there has been an honest mistake, even though it was inadvertent, it will afford relief in any case where it considers that it would be unfair, unjust or unconscionable not to correct it.

Chapter 14 Purchase and Sale of a Business

This chapter deals with the tax aspects of the purchase and sale of a business, also referred to as mergers and acquisitions. It deals with tax considerations for various purchase and sale transactions from both the purchaser's and vendor's tax positions. This chapter has been extensively revised to focus on risks associated with mergers and acquisitions.

Chapter 15 GST/HST Issues

This new chapter on GST/HST Issues refocuses the issues on risks associated with GST/HST. It will assist tax professionals who deal with (or those who would like to gain further information) regarding Canada's Goods and Services Tax (GST) and Harmonized Sales Tax (HST). The objective of this material is to provide a resource that identifies a variety of current common audit exposures.

Chapter 16 Estate Planning

This chapter discusses estate planning services that can be provided prior to a taxpayer's death. Before engaging in any estate planning advice service, a tax professional must assess the suitability of the firm. More than tax and accounting expertise is required. An inventory of skills should be completed to determine familiarity with several areas that affect estate planning in order to understand when a client should be referred to other professionals such as bankers, financial planners, insurance agents, investment advisors, lawyers or trust officers. Some other considerations include the family dynamic in family-run businesses, the importance of the engagement letter, collecting data, determining other agreements that may impact the estate plan, the client's goals and understanding issues specific to estate planning.

Chapter 17 The Taxation of Trusts

This chapter has been updated and revised to focus on areas of risk associated with personal trusts. The concept of trusts is based on the ability at law to separate legal ownership and control of the property (vested in the trustee) from its enjoyment or use (vested in the beneficiaries).

Chapter 18 U.S. Corporate and Personal Income Tax Issues

This new chapter provides information on risks associated with Canadians doing business in the U.S. and with U.S. personal tax issues for Canadian advisors.

This chapter is intended to provide a broad understanding of the basic U.S. tax implications of Canadian business operating in the U.S. and provides information on risks associated with the complex nature of the U.S. tax system and the multiple levels of taxation (such as federal, state and local) for Canadian businesses who wish to expand their business operations in the U.S.

Some of the key U.S. corporate tax risk areas facing Canadian companies looking to do business in the U.S. have been identified.

Risks associated with personal tax issues are also discussed, such as the failure to recognize a U.S. citizen or resident at the beginning of a tax engagement, failure to recognize U.S. tax ramifications of a Canadian transaction for a U.S. person, failure to recognize reporting obligations of a U.S. person, or failure to advise a non-U.S. person about investing in the U.S. or spending time there.

Chapter 19 Section 85

Where a taxpayer who deals not at arm's length wishes to transfer an asset to a corporation, the transaction will take place at fair market value under Section 69 of the *Income Tax Act*. If the asset has appreciated in value, the taxpayer will realize a gain on the disposition of the asset to the corporation. This general rule causes great concern when taxpayers wish to rearrange their affairs or change ownership of assets.

To allow for a tax-deferred transfer of assets, the *Income Tax Act* contains provisions in Section 85 that allow the taxpayer and the purchasing corporation to jointly elect that the transaction take place at a value other than fair market value.

Chapter 20 Share Attributes

Tax professionals are frequently asked what types of shares should be issued in a corporation. The question usually arises on the incorporation of a new business when there are one or more business partners, in an estate freeze situation and with a public corporation. This chapter discusses the various share provisions that are available and the possible risks if the incorrect attributes are used.

[Practice Aid 20.1](#) provides sample clauses for share provisions.

Chapter 21 Other Areas of Risk

Many of the most frequent areas that give rise to malpractice claims are reviewed in [Chapter 3](#) of this *Guide*. This chapter surveys other areas of risk that, while not frequently the source of claims against accountants, involve provisions of the *Income Tax Act* that frequently give rise to audit risk and tax litigation.

A discussion on the general anti-avoidance rule has been included in this chapter.

Chapter 22 Non-Resident Issues

This new chapter has been added to discuss tax issues on immigrating to or emigrating from Canada, withholding tax and other issues associated with non-residents.

Contributors to the Tax Risk Management Guide

The authors wish to thank the many contributors to the inaugural edition of the *Tax Risk Management Guide*:

- Dan Jakubowicz, CPA, CA and Helen Lakkotrypys, CPA, CA ([Chapter 2](#), Self-Assessment Tools: Tax Risk Questionnaire)
- Sandra Bussey, CPA, CA, TEP ([Chapter 12](#), Deceased Taxpayers)
- Margaret Riggin, BA, CPA, CA ([Chapter 11](#), Tax Return Preparation portion)
- Maureen Vance, B. Comm, CPA, CA ([Chapter 11](#), CRA Electronic Services portion)
- Diane Gaudon, FCPA, FCGA ([Chapter 15](#), GST/HST Issues)
- Dan Lundenberg and Katrina Robson ([Chapter 18](#), U.S. Corporate Income Tax Issues)
- Ray Kinoshita, CPA, CA ([Chapter 18](#), U.S. Personal Income Tax Issues).

For more information, see [About the Authors](#) in this *Guide*.

Practice Aids on Our Website

The Practice Aids in this *Guide* can be found on the *Tax Risk Management Guide* webpage at www.cpacanada.ca/trmg

The engagement letters included in this Manual may not be suitable for all types of engagements. In each case, carefully consider what should be in the engagement letter. For example, a paragraph regarding compliance with the *Personal Information Protection and Electronic Documents Act (PIPEDA)* may be recommended.

TRMG Landing Page

For the online user, a new landing page will pop up once they log in to their Knotia account. This landing page highlights and provides quick links to several important topics of the *Guide*, such as:

- risk areas pertaining to preparation and filing of income tax returns and forms, information returns and forms, and GST/HST related returns and forms
- risks associated with tax planning / advice services
- risks to be considered while providing tax appeal and litigation services.

The landing page also contains links to many other useful tax resources from CPA Canada, the CRA, and the leading accounting firms, in an effort to build a comprehensive information centre to facilitate practitioners' needs on tax information updates and research.

We Welcome Your Comments

We hope that *CPA Canada Tax Risk Management Guide* will continue to meet your practice needs. The authors, Brian J. Wilson, B Comm, LL B, CPA, CA, TEP, Nancy Jane Bullis, BA, LL B, LL M, and the publisher, CPA Canada, appreciate hearing from subscribers and we will continue to respond to your valued comments and suggestions. Your feedback is important to us as it enhances our ability to meet our goals in making the *Guide* a practical and useful reference tool for you.

Please send your comments to our attention by e-mail at trmg@cpacanada.ca

Except where otherwise noted, the legislation is current to June 1, 2016.

Yours very truly,

The image shows two handwritten signatures in black ink. The signature on the left is for Brian J. Wilson, and the signature on the right is for Nancy Jane Bullis. Both signatures are written in a cursive, professional style.

Brian J. Wilson

Nancy Jane Bullis