



December 5, 2011

Lalith Kottachchi
Legislative Chief, Real Property and Financial Institutions
Sales Tax Division
Finance Canada
140 O'Connor Street
Ottawa, Ontario K1A 0G5

Dear Mr. Kottachchi:

Re: Commodity Tax, Customs & Trade Section Meeting

Thank you for meeting with representatives of the Commodity Tax, Customs & Trade Section of the Canadian Bar Association (the CBA Section), on February 23, 2011. The Canadian Bar Association is a national association representing over 37,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice. Lawyers in the CBA Section deal specifically with commodity tax, customs and trade in their practices and are grateful for opportunities to consult with Finance Canada on ways to improve the law in these areas.

The CBA Section would like to follow-up with Finance Canada on the following issues, which we feel are particularly significant.

In order of importance:

1. The inherent limitations on the application of section 156 of the *Excise Tax Act* (the Act) remain a continuing problem, particularly in corporate reorganizations. We recommend amending section 156 to expressly permit the closely related group election to apply to a corporation's or partnership's initial acquisition of property, provided the entity will continue in existence and make supplies on an ongoing basis, and enters into a joint indemnity.
2. There is also continuing difficulty in applying section 167 in commercially common situations involving a purchasing entity, which is a newly incorporated company (Newco) incorporated solely to purchase the business in question, with the parties' intent to sell the Newco shares following the transaction to a third-party purchaser,

and subsequently wind up or amalgamate Newco with the third-party purchaser. The Canada Revenue Agency takes the position that “commercial activity is required in order that Newco be entitled to register and make the section 167 election”, making the election questionable for Newco in this situation. We recommend amending the Act to expressly permit use of the election in this situation.

3. Section 273 continues to be unduly limited because of inherent limitations in the section itself. We recommend amending section 273 to extend the prescribed election to cover the initial acquisition of joint venture property by joint venture participants.
4. We recommend amending *The Input Tax Credit Information (GST/HST) Regulations* to expressly contemplate billing agents. These agents are sufficiently ubiquitous as to be important to consider in the regulations.
5. Pension plans and the December 2009 amendments to the definition of financial services were the subject of significant discussion at our meeting. We continue to be of the view that significant issues remain in these areas. We recommend that these areas be reviewed with a view to further clarifying and simplifying the rules.

Thank you for your time and attention.

Yours very truly,

(original signed by Rebecca Bromwich for Craig M. McDougall)

Craig M. McDougall, QC
Chair
Commodity Tax, Customs and Trade Section