

**The Joint Committee on Taxation of
The Canadian Bar Association and
The Canadian Institute of Chartered Accountants**

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January 19, 2005

Mr. Brian Ernewein
Director, Tax Legislation Division, Tax Policy Branch
Department of Finance Canada
17th Floor, East Tower,
140 O'Connor Street,
Ottawa, Ontario
K1A 0G5

Dear Mr. Ernewein:

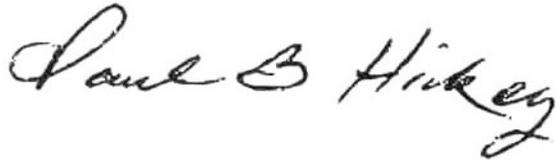
Re: Issues for Consideration – February 27, 2004 Technical Amendments –Addendum

This is further to our submission of December 20, 2004 in which we highlighted a variety of technical issues in respect of the general provisions (i.e. non foreign affiliate related measures) contained in the February 27, 2004 Draft Technical Amendments (the “2004 Proposals”). Please see the attached addendum containing an additional concern that was omitted in error from our recent submission relating to the restrictive covenant provisions.

New point A.13 details a concern related to the potential non application of the elective provisions of proposed subsection 56.4(3) to a situation where an arm’s length sale of shares is preceded by a sale of target assets to a wholly owned subsidiary.

Please consider this additional concern together with our other points contained in our December 20, 2004 submission.

Yours truly,



Paul B. Hickey, CA
Chair, Taxation Committee
Canadian Institute of Chartered Accountants



Brian R. Carr
Chair, Taxation Section
Canadian Bar Association

**Joint Taxation Committee Submission on February 27, 2004
Technical Amendments**

Addendum

A. Restrictive Covenants

A.13 Non Arm's Length Test Too Restrictive Where Intermediary Transfer of Assets to Wholly Owned Subsidiary as Part of Arm's Length Disposition

The elective provisions in proposed subsection 56.4(3) only apply to restrictive covenants granted to arm's length persons. There is therefore a concern that technically this provision may not provide relief in a common circumstance where target assets are first transferred by a vendor corporation to a wholly-owned subsidiary followed by a sale of the shares of that subsidiary to an arm's length purchaser. Where this is done, it does not seem possible to employ subsection 56.4(3) on the asset transaction even though the overall transaction is clearly arm's length. Frequently the form of the transaction is not tax driven, but based on commercial/employment law considerations, and denial of the election in these circumstances seems inappropriate in tax policy terms and potentially adverse.

Recommendation:

We recommend that the proposed amendment to subsection 56.4(3) be clarified to address the concern noted above where there is an intermediary sale of assets to a wholly owned subsidiary prior to a sale of shares to an arm's length party.