



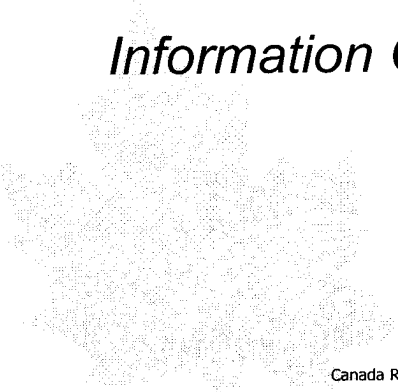
CRA Audit Issues

Date: November 14, 2012
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Jim McNamara

 Canada Revenue Agency Agence du revenu du Canada 

Technical issues

Information Gathering Tools



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Gathering books and records, documents and information from a taxpayer or a third party

- *231.1 - Inspection*
- *231.2(1) – Requirement*
- *231.2(2) – Unnamed Person Requirement*
- *231.6 – Foreign Based Requirement*
- *231.7 – Compliance Order*

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Technical Issues

Current Audit issues

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GST/HST

1. *Recapture Input Tax Credit*
2. *ITC Allocation % – mixed supplies*
3. *Financial services*
4. *Imported supplies*
5. *Reinsurance /Loading*
6. *Loyalty Reward Points*
7. *VDP – Related Parties*

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Income Tax

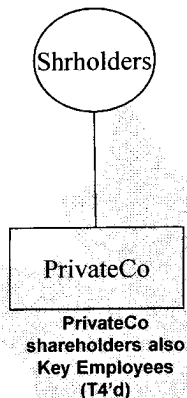
1. *Artificial capital losses*
2. *Loss trading*
3. *Surplus strips*
4. *Offshore Bank accounts held by individuals*
5. *Donation arrangements*
6. *International transactions*
7. *S. 85 Rollover*
8. *RRSP appropriation*
9. *Tax Free Savings Account - TFSA*

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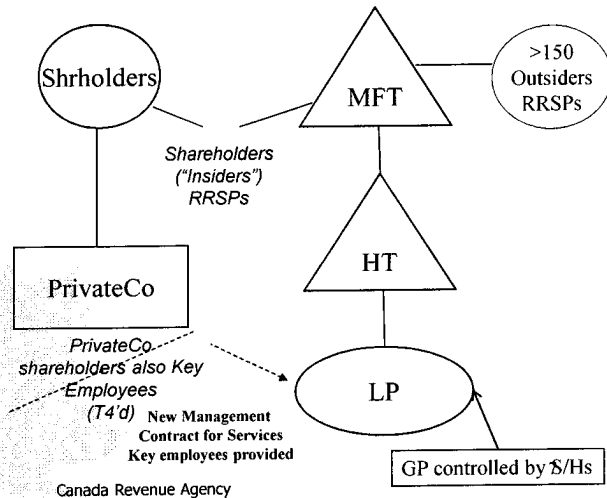
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RRSP Appropriation

Pre-Reorg. Structure

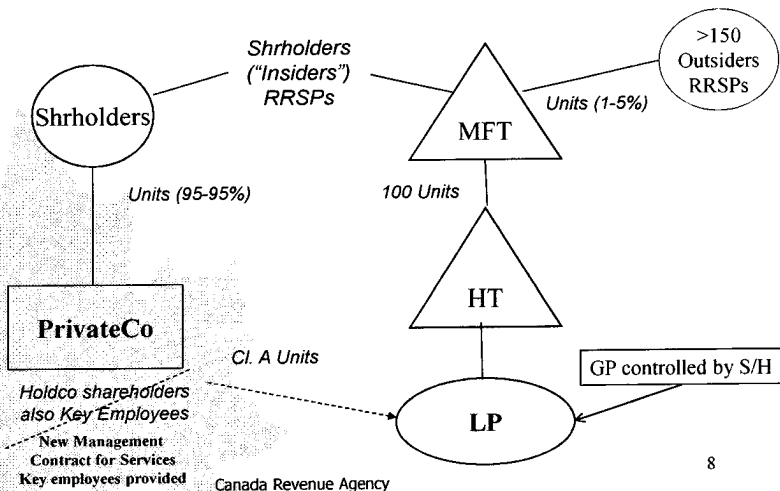


Post-Reorganization Structure



RRSP Appropriation

Step 7 - PrivateCo subcontracts LP to carry on its management services operations. Management income reported by LP and majority of expenses reported by PrivateCo.



Tax Free Savings Account

- *Launched in 2009 to promote savings*
- *Circumvent the TFSA \$5,000 a year contribution limits*
- *Shift taxable income from Taxpayer into his TFSA account through their RRSP account.*

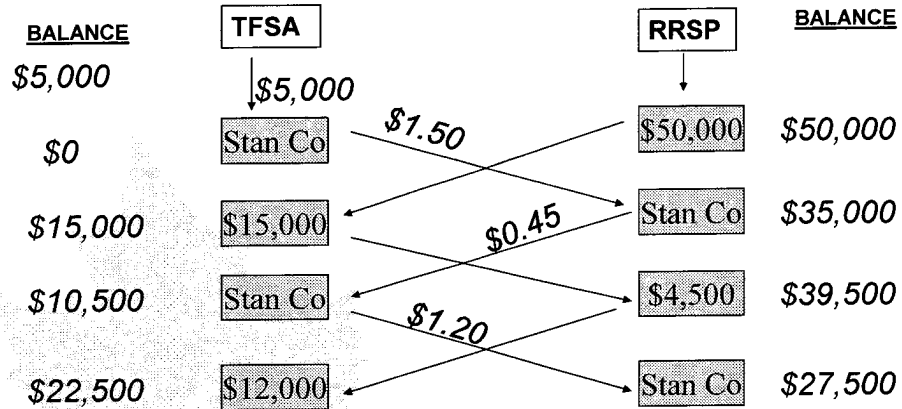
Tax Free Savings Account

Swap Transactions

- *Inter-account transfer of assets generally treated as a purchase and sale*
- *Example: transfer shares between RRSP and TFSA*
- *There is no real intention to dispose of the property*
- *Treated as sale not withdrawal from RRSP (not taxable)*
- *Purchase in TFSA (withdraw tax free)*

Tax Free Savings Account

SWAPS



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Technical Issues

Third-Party Civil Penalties

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Income Tax and Excise Tax Act

- *Misrepresentation of a Tax Matter by a Third Party*

- *Section 163.2 of the ITA*
- *Section 285.1 of the ETA*

Penalty - Types and Amounts

Two types of penalties

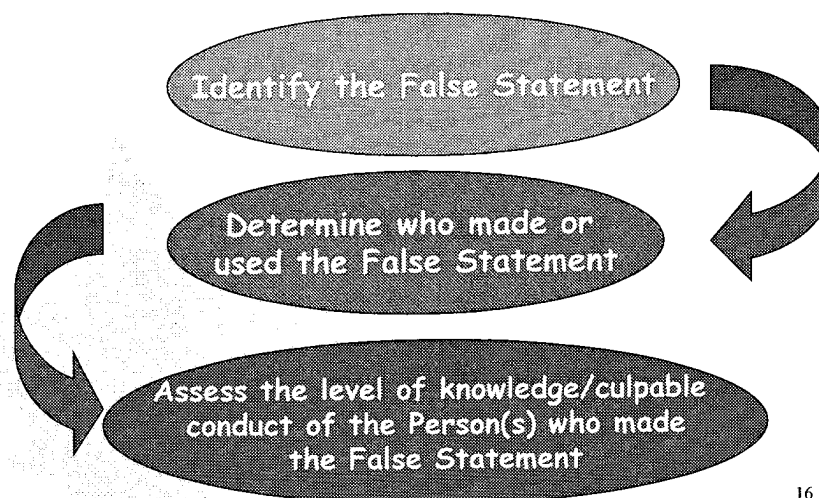
- **Planner Penalty** *for promoting, planning and valuating activities*
- *The penalty amount is the greater of*
 - *\$1,000; and*
 - *the gross entitlements from the planning or valuation activity*

Penalty - Types and Amounts

- *The second penalty is called the **Preparer Penalty***

- *The penalty amount is the greater of:*
 - *\$1,000; and*
 - *the lesser of:*
 - *the potential amount of gross negligence penalty on the taxpayer; and*
 - *\$100,000 plus the gross compensation in respect of the false statement*

3 Steps to Third-Party Civil Penalties



Relevant factors to be considered for the application of the penalty

- *Whether the position taken is obviously wrong, unreasonable, and/or contrary to well-established case law;*
- *Considering the advisor's experience with the relevant subject matter and knowledge of the taxpayer's specific circumstances, the extent of knowing or deliberate participation in false statements;*

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Relevant factors to be considered

- *The degree to which the culpable conduct represents the most aggressive and blatantly abusive behavior;*
- *The extent to which there is a pattern of repeated abuse; and*
- *Whether the reduction of taxes is significant.*

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Measures to control the application of the penalties

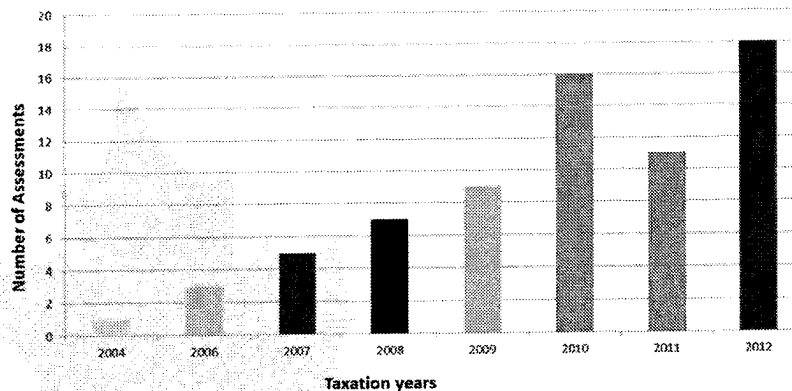
The key controls include:

- *A Third-Party Penalty Review Committee*
- *A technical support group in HQ*
- *A comprehensive referral process*
- *Training delivered to over 2,000 CRA auditors*

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Third party penalty assessments June 29, 2000 to August 31, 2012



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THE CASES

Six different kinds of cases have been reviewed by the Third-party Penalty Review Committee:

- *Fictitious Amounts (T4s, Business, Farming and Rental Losses, Employment Expenses)*
- *Appropriations of Funds/Invalid Journal Entries*
- *Donation Arrangement*
- *RRSP Strip*
- *Deceptive Fair Market Value*
- *Scientific Research and Experimental Development claims*

Transfer Pricing

- *OECD new guidelines*

Administration Issues

Approach to Large Business

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Approach to Large Business

2011-2012

2012-2013

TCTSO	Ontario Region	National	
	4	28	52
	11	60	108
	<u>15</u>	<u>88</u>	<u>160</u>

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Approach to Large Business

- *Tailored compliance approach based on risk rating*
- *Segmentation based on risk (low, medium, high)*
- *Face-to-face meetings*
- *More efficient use of CRA resources*
- *Tax certainty for participating Large Business entities*
- *Five year implementation period*
- *Positive taxpayer feedback*

Achieving Audit Currency

- **Resolution of Legacy Files:**
 - *Defined as outstanding cases of pre-2008 tax years*
 - *Workable vs. non-workable*
 - *Approximately 1,300 legacy files:*
 - *64% domestic issues; 36% international issues*
- **Audit Currency objectives:**
 - *Audit most recent year filed by 2015-16*
 - *Current year assessed plus prior year*
 - *Exception: higher-risk and/or egregious situations*

Dispute Resolution

- *Auditor*
- *Team leader/case manager*
- *Manager*
- *Assistant Director Audit*
- *Director*
- *HQ*

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**Thank You
Questions?**

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