



Upcoming events:

- Litigation Day  
Sept. 15, 2011  
(Chair: Peter Effer)
- CRA Day  
Oct. 20, 2011  
(Chair: Sandra Pereira)
- Internat'l Tax Day  
Nov. 17, 2011  
(Chair: Lori Burrows)
- Holiday Reception  
Dec. 8, 2011  
(Chair: Dorothy O'Shea)

Inside this issue:

Chapter Tax Committee 2

Sponsor's Desk: KPMG LLP 2

Sponsor's Desk: McCarthy Tetrault LLP 3

Membership Award & Scholarship 5

2011-2012 Chapter Board 6

Who We Are 7

Membership Benefits 7

Chapter President's Corner

Welcome to this new edition of the Toronto Chapter Newsletter. We are very excited about the launch because as the chapter continues to grow, the need to communicate with you regarding emerging tax issues, TEI's advocacy efforts, upcoming events and people movement becomes increasingly important. I hope this is the beginning of something that will last for decades to come.

In this edition, you will find highlights from some of our past events as well as a "Sponsor's Desk" where tax articles are being featured.

I would like to take this opportunity to extend a sincere thank you to Stuart Lawton (outgoing chapter president), Brian Soares and Paul Magrath (outgoing directors) for their leadership and for all they have done to make TEI a stronger organization.

It is with a great sense of responsibility and humility that I accept the President's role. It is also done with pride and emotion, considering how brilliant my predecessors were. Their achievements are not easy to follow. Thanks to their vision and efforts, TEI is by far the most prominent and well-respected professional

tax organization in the world.

The greatest asset of any organization is its people; they are the ones who push the organization to do more, go farther and think bigger. Therefore, we urge you to get involved and stay involved. We encourage you to submit your ideas, article(s), TEI testimonials and comments to Martha Papadopoulos or Carol Felepchuk who are the editors of this newsletter. I look forward to meeting and working with each of you in the coming year!

Winston Woo,  
Toronto Chapter President.

A Message from the International TEI President

First, I would like to thank Stuart Lawton and his team for their dedication and leadership this past year and congratulate Winston Woo as he takes the reins as Toronto's 2011-2012 Chapter President.

At the Institute level, TEI will focus on three broad initiatives to build on our past and prepare for the future. In every submission issued, TEI references itself as the preeminent association of business tax professionals worldwide. That statement is absolutely true and it is because of the exceptional staff located in Washington and the many member volunteers around the globe who enthusiastically lend their time and talent to TEI year after year.

**The vision 20/20 Task Force** will define the ideal TEI in 2020 and develop a strategic plan to ensure that the Institute remains the preeminent association of business tax professionals worldwide.

**The Global Tax Task Force** will recommend methods and strategies to monitor, engage with, and influence other government organizations and regulators. The task force will address how TEI can best coordinate and manage advocacy for multi-jurisdictional issues, including tax treaties and transfer pricing.

**The Executive Committee** members and staff will focus on a number of other initiatives in support and further-

ance of TEI's outstanding record advocating for the interests of members and their employers, providing exceptional educational and networking opportunities for members and managing TEI's financial and human resources creatively, efficiently and effectively.

The Vision Task Force will be calling on the Toronto Chapter for its ideas about how Tax Executives Institute, Inc. should be organized and what it should be doing in 2020. Think about it, engage and add your voice to the discussion of TEI's future.

David Penney,  
International President.



## Toronto Chapter Income Tax Committee

The Toronto Chapter has created an Income Tax Committee to respond to the interests of our members and to ensure greater participation on tax policy, administration and technical income tax matters. Since our formation, we hit the ground running and have already worked with the National Income Tax Committee on the submission to the Department of Finance on the taxation of corporate groups. We are now working with the National Income Tax Committee on the consultation initiative for income tax technical publications.

Based on the feedback from the membership survey conducted in March, we have selected four topics to develop and ad-

vance as part of our 2011-2012 mandate. Our committee will be focusing our efforts on the following issues. Any feedback can be directed to the Lead named below:

1. CRA audit approach to large corporate files (Lead — F. Cianchetti)
2. Regulation 102/105 safe harbour guidelines to ease compliance burden (Lead — L. Spencer)
3. Transfer pricing audit administration process and APA process (Lead — A. Bertolas)
4. Limitation period for assessments/re-assessments (Lead — W. Tang)

In some cases, other TEI committees

may already be working on some of these issues, so to avoid the duplication of effort and to maintain a consistent approach to issues, we intend to liaise regularly with others on our progress. Please feel free to contact anyone on the committee with feedback or comments.

Sandra Pereira, Chair  
pereirasandra@rogers.com

### *Committee members:*

*Sandra Pereira, Chair; Angelo Bertolas, Co-Chair; Sandra Ceccaci; Helena Chu; Frank Cianchetti; Nadine Clarke; Rhonda DeJordy; Donna Fraser; Qi Herr; Michael Holtzman; Ian Hunter; Steve Lowden; Paula Moore; Linda Spencer; Winnie Tang; Mark Woodruff*

## Sponsor's Desk Featuring KPMG LLP

### 2011 TEI Professional Development Day

On Thursday, April 14, 2011 the GTA KPMG Tax team once again partnered with the TEI Toronto Chapter to host the local Tax Executives Institute's (TEI) Professional Development Day at the Metro Toronto Convention Centre. More than 225 people attended the seminar-based event that provided insight and learning opportunities on tax trends.

Attendees heard the latest on Canadian and International Tax Developments from KPMG's Tax professionals. Topics included updates on global trends in tax administration, U.S. tax, international tax and IFRS tax accounting. There was a session on how to effectively deal with trusts and partnerships, as well as how to best manage HST post implementation issues. An informative session on corporate tax loss consolidation was also presented that highlighted KPMG's survey and submission to the federal government on the subject.

The Keynote Speaker was Paul Lynch, head of KPMG's Dispute Resolution and Tax Controversy practice, and a former senior CRA official, who provided an insider's view on how the CRA operates. The lunch session helped attendees understand how they can deal more effectively with audit officials in ways that can help improve dispute resolution and make their CRA audits smoother.

The event survey results and anecdotal feedback highlighted that overall, attendees were very satisfied with the 2011 TEI PD Day. The majority of survey respondents (78%) stated that their main objective in attending the event was to gain further knowledge of the various topics and 95% felt that their expectations were met or exceeded. Many attendees felt that the presentations were thorough and included relevant examples which added value and increased effectiveness.

The professional development event

also proved to be a terrific opportunity to showcase the TEI organization and the value of membership. In fact, numerous attendees requested to receive more membership information.

"We are thrilled with the event turnout and the opportunity to provide helpful content to TEI members" said Chris Sexton, Partner—GTA Tax Business Unit Leader at KPMG. "We really value our relationship with TEI and we welcome every opportunity to work with the Toronto Chapter in the future."

If you were unable to attend the event but are interested in reviewing the conference materials, please visit the KPMG website: [www.kpmg.ca/tei](http://www.kpmg.ca/tei).

If you have any questions regarding the event or session content, please contact Christine Andrew at KPMG at 416.777.3118.



## Sponsor's Desk Featuring McCarthy Tetrault LLP

*Editor's Note: Portions of this article are reproduced from an article in the International Tax Review dated June 1, 2011 entitled "The Risky Business of Canadian Tax Audits"*

### **Risky Business—The CRA Audit Story**

#### ***Risk-based Audits***

The CRA recently moved away from employing a “one size fits all” approach to auditing large case files to one where taxpayers are categorized as high, medium and low risk and applying audit plans having a scope that is specific to the particular risk profile. This risk-based approach is similar to models that were implemented by the tax administrations in Australia and the United Kingdom a few years ago. CRA has yet to publish details on its new “risk-based” approach for auditing large case files and it is not expected that any of the details will be shared with the Canadian tax community at large. However, some information about the program began to emerge from CRA officials in the context of informal “town hall” meetings with taxpayers and their advisors late last year and earlier this year. In those meetings, the CRA advised that the entire pool of large case file taxpayers will be risk-assessed on an annual basis and that the initial risk assessments for all its large case files (based on defined criteria developed by CRA's headquarters personnel) is almost complete. However, the CRA's intention is to roll out the program over a 5-year period, beginning with a small pilot project of approximately 50 large case files.

#### ***Access to Accountant Working Papers***

Typically, the CRA's audit of a large case file taxpayer begins with the development of an audit plan before the audit commences. In developing the audit plan, CRA auditors often need access to accountant working papers for the audit period and, more particularly, those documents that detail the taxpayer's tax provisions or uncertain tax filing positions. The typical CRA rationale for the request is that it gives the Agency a risk-assessment tool to allow the CRA to reduce the amount of required field work, resulting in a more focused and efficient audit.

If faced with such a request, the legal bases for refusing to provide the CRA with such working papers are extremely limited, even if the working papers were created in the context of a confidential relationship between the taxpayer and its external accountant. Canadian courts have confirmed that the CRA's statutory audit powers are extremely broad and, more specifically, that confidential communications between a taxpayer and its accountant are not protected from disclosure in response to a CRA demand for documents or information. In most cases, such documents can only be withheld from the CRA if there is a factual basis for protection from disclosure on the grounds of solicitor-client or litigation privilege.

The issue of the propriety of CRA's request for access to accountant working papers was the subject of a Federal Court proceeding initiated by the accounting firm PricewaterhouseCoopers LLP (“PwC”) in October 2007 in response to a formal CRA demand – otherwise known as a “Requirement” – for access to their working papers in connection with their engagement for Canadian subsidiaries of Ford Motor Company. In the course of CRA's audit of Ford's Canadian subsidiaries, the CRA used its statutory powers to issue a Requirement to demand that PwC provide the CRA with copies of its working papers to assist with the development of the audit plan for the Ford subsidiaries. PwC sought judicial review of the CRA's decision to issue the Requirements on various grounds. It was an open secret at the time the Requirements were issued that the CRA was reviewing its internal policy relating to when the CRA might seek working papers from a taxpayer's external accountant or auditor and, therefore, one of PwC's complaints before the Federal Court was that it was inappropriate for the CRA to have issued the Requirements to PwC before the CRA had finalized and published its new written policy on the topic.

PwC's application for judicial review was discontinued in January 2011 and it is unclear the basis upon which PwC and the CRA were able to resolve the matter. However, during the intervening 39 month period (from the time that PwC filed its application to settlement), the CRA publicly disseminated its internal policy on obtaining information from taxpayers, registrants,

Continued on page 4 ...



## Sponsor's Desk Featuring McCarthy Tetrault LLP

... Continued from page 3

and third parties, which covers CRA requests to obtain working papers from external accountants and auditors. Under the policy, CRA confirms that such working papers “may be necessary, although not routinely required, in the determination of a taxpayer’s liabilities and entitlements”. The CRA policy does not provide guidance to its personnel on the “non-routine” circumstances that would warrant making a demand for such documents from the taxpayer’s external accountant or auditor.

An interesting part of the CRA’s case was a survey of its own large case file managers to get their feedback on the extent to which the large case audit teams were seeking access to working papers prepared by the taxpayer’s external accountants or auditors. The CRA invited 146 managers to respond and the responses from the 81 managers who responded to the CRA’s survey were summarized in an affidavit that the CRA filed in the course of responding to PwC’s court application. Although it is unclear the extent to which the survey responses (based on the 81 managers) are representative of all the CRA audit teams that cover the entire population of approximately 1,000 large case file taxpayers, the CRA presumably put forward the information on the basis that it was a representative sample of responses for the entire group.

The responses to the CRA’s survey provide some interesting insights on recent experiences “in the field”, as follows:

- **Frequency of Requests:** Despite the CRA’s policy that working papers will not be requested routinely, almost 25% of the managers responded that access was requested “regularly” by their audit team. Approximately 45% of the managers responded that they rarely or never request access to such documents.
- **Method of Obtaining:** In over three-quarters of cases (68%), the managers make the request directly to the taxpayer who, in turn, makes the request to the third party accountant or auditor. In the remaining cases, the taxpayer either directs the CRA to contact the external accountant or auditor or the CRA initiates direct contact on its own.
- **Timing for Request:** Where working papers have been requested, 85% of the managers reported that the request was made during the course of the audit and the remaining 15% indicated that the request was made before having evaluated the risks associated with the file.
- **Nature of Request:** Almost 80% of managers indicated that the request for working papers was specific to a transaction or issue and 5% of managers indicated that the request was broad in nature.
- **Types of Issues / Reasons:** Approximately 47% of managers indicated that working papers are sought in situations of suspected aggressive tax planning and 23% of managers responded that the requests related to transfer pricing. Twelve percent responded that the request is driven by situations in which the taxpayer has a history of non-compliance (or is otherwise considered to be a high audit risk) and 14% of managers reported that obtaining the working papers is part of the general risk assessment of the taxpayer. However, the most frequently (73%) cited circumstance in which such working papers are sought is when the CRA cannot find the answer to a query based on a review of the documents at the taxpayer’s place of business in the course of the audit.

Reasonable folks can disagree on whether or not this is a healthy or appropriate audit trend. In the meantime, taxpayers would be well-served to review (and re-implement) its document management, retention and destruction policies and to fashion a robust legal privilege protocol over its sensitive planning memoranda. This is the dawn of a new era of risk insulation and risk management for the TEI tax director.

Chia-yi Chua  
Partner, McCarthy Tetrault LLP  
416.601.7715, cchua@mccarthy.ca



TAX EXECUTIVES INSTITUTE

## TORONTO CHAPTER

### A Look At Our Membership Award and Scholarship Presentations

The Annual General Meeting for the TEI Toronto Chapter was held on Thursday, May 26, 2011 at The National Club. As a tribute to those with 25+ years of membership with TEI, a Membership Award Presentation followed the Annual General Meeting. We were delighted and honoured that the award recipients pictured below with Stuart Lawton and Winston Woo, our outgoing and incoming presidents, attended the Membership Award Presentation.



Also on May 26, 2011, we were pleased to present the A.B. ("Mac") McKie Memorial Scholarship to Sally Chiu and Juliana Yuen of the University of Waterloo. Sally and Juliana are pictured on the right receiving their scholarship from our outgoing chapter president, Stuart Lawton.

Sally and Juliana have an exceptional future to look forward to and we wish them every success in their academic and professional endeavours.

Congratulations Sally and Juliana!





### Welcoming the TEI Toronto Chapter Board for 2011-2012

The following have been elected to serve on the Toronto Chapter's Board of Directors for the 2011-2012 term:

Winston Woo, President  
Lori Burrows, 1st Vice President  
Martha Papadopoulos, 2nd Vice President  
Nicholas Vlastaris, Secretary  
Paul Revell, Treasurer  
Ernest Greenfield, Assistant Treasurer/Secretary  
Carol Felepchuk, Chapter Representative

Carol Nixon, Director  
Dorothy O'Shea, Director  
Sandra Pereira, Director  
Peter Effer, Director  
Mary Sacchetti, Director  
Steven Lowden, Director



Incoming TEI Toronto Chapter Board for 2011-2012

Front row: Ernest G., Nicholas V., Martha P., Dorothy O. and Peter E.

Back row: Mary S., Steven L., Lori B., Carol F., Sandra P., Paul R. and Winston W.

This chapter newsletter is a quarterly publication. We welcome your contributions and comments. Please contact the editors if you would like to submit an article or to provide feedback:

Carol Felepchuk  
carol.felepchuk@td.com

Martha Papadopoulos  
marthap@woodbridge.com

This newsletter is for general discussion purposes and should not be relied upon for tax advice.



TAX EXECUTIVES INSTITUTE

## TORONTO CHAPTER

### TEI and the Toronto Chapter—Who We Are

TEI is the preeminent association of business tax executives. The Institute's 7,000 professionals manage the tax affairs of the leading 3,200 companies in Canada, the United States, Europe and Asia and must contend daily with the planning and compliance aspects of Canada's business tax laws. Canadians constitute approximately 10 percent of TEI's membership, with our Canadian members belonging to chapters in Calgary, Montreal, Toronto and Vancouver, which together make up one of our eight geographic regions. TEI's membership includes representatives from major industries including manufacturing; distributing; wholesaling and retailing; real estate; transportation; financial services; telecommunications and natural resources (including timber and integrated oil companies).

For additional information, please visit our TEI website at [www.tei.org](http://www.tei.org) and our Toronto Chapter web page at [www.tei.org/chapters/toronto/pages/default.aspx](http://www.tei.org/chapters/toronto/pages/default.aspx).

#### *Mission*

The mission of the Tax Executives Institute is to enhance and improve the tax system and to serve its members, their employers, and society generally by facilitating interaction among, and the training of, members and their staff, by effectively advocating its members' views, and by promoting competence and professionalism in both the private and government sectors.

#### *Principle*

The Tax Executives Institute is dedicated to the development of sound tax policy, compliance with and uniform enforcement of tax laws, and minimization of administration and compliance costs to the benefit of both government and taxpayers. These goals can be attained only through the members' voluntary actions and their adherence to the highest standards of professional competence and integrity.

### Membership Benefits / What We Do

The membership benefits are numerous and include:

1. Networking opportunities
2. Excellent program for continued education (see our event schedule on the front page)
3. Opportunity to participate in events and courses at the national level as well as in the U.S.
4. Opportunity to provide input and promote the improvement of tax law by participating in TEI tax committees and liaison meetings with the governments
5. Our bimonthly professional journal, "The Tax Executive" disseminates timely information for the benefit of our members
6. The TEI Toronto chapter membership roster
7. Job bank and posting



We are on the web!

[www.tei.org](http://www.tei.org)