



AGENDA

		Presenter
8:00 - 8:30 am	Breakfast	
8:30 - 8:40 am	Introductions and Agenda	B. Flexman
8:40 - 8:55	Update on VIFSSC Report/Budget Changes/Montreal	B. Flexman
8:55 - 9:30	Panel Discussion <ul style="list-style-type: none"> •Dealing with Audits •Transfer Pricing and Allocation Issues •Budget Changes 	PWC/ KPMG/ E&Y/Deloitte
9:30 - 9:40	Update on Rulings and Interpretations	B. Flexman
9:40 - 10:10	Panel Discussion <ul style="list-style-type: none"> •Rulings/ Interpretation of Interest •Maximizing your IBA claim 	PWC/ KPMG/ E&Y/Deloitte
10:10 - 10:20	Panel Discussion—Current Issues <ul style="list-style-type: none"> •Questions/ Answers/ Discussion 	PWC/ KPMG/ E&Y/Deloitte
10:20 - 10:30	Wrap- up <ul style="list-style-type: none"> •CPE Credit certificates •Feedback 	B. Flexman

PANELISTS

- Chris Gimpel, Deloitte, IFC BC Director
- Tony Martin, KPMG, IFC BC Director
- Brian Emmott, Ernst & Young
- Marco Cavasin, PricewaterhouseCoopers



VANCOUVER INTERNATIONAL FINANCIAL SECTOR STEERING COMMITTEE

- Program registrant can include a branch of a foreign corporation
- Management services regulation to focus on the attraction of regional corporate management activities that support international commerce
- Amend the Specialist to set minimum annual salary of \$100,000, any qualifying activity, with a 5-year phase out period.
- Clarify the qualifying activities to include management of a venture capital, private equity fund or alternative investment fund, which has a fund size in excess of \$50 million of capital sourced from non-resident investors.
- Expand qualifying activities to include certification and trading of carbon credits to a non-resident person or on behalf of a non-resident person.
- Expand qualifying activities to include digital media publishing and distribution of copyrighted material to entities outside of Canada or to a non-resident person, moving the industry from contracted development to full service activity.

VANCOUVER INTERNATIONAL FINANCIAL SECTOR STEERING COMMITTEE

- Expand qualifying activities to include the sale, assignment or licensing of proprietary technologies and services developed in B.C. to entities outside of Canada or to a nonresident person:
 - Biomass related technologies and services (gasification, anaerobic digestion, pyrolysis, wood pelletization, biofuels)
 - Energy efficiency technologies and services (demand-side, grid measurement and management, telemetry, green buildings)
 - Technologies and services related to the conversion, distribution, storage, monitoring and pollution reduction from fossil fuels
- Expand qualifying activities to include the development, publishing and distribution of an online or mobile production to entities outside of Canada or to a non-resident person.
- Expand qualifying activities to include management services related to life sciences research and development activities, including clinical trials.

A NEW NAME

- The International Financial Activity Act is now the International Business Activity Act (IBAA) reflecting the broadened scope of the legislation.
- IFC BC → IBC BC (?)

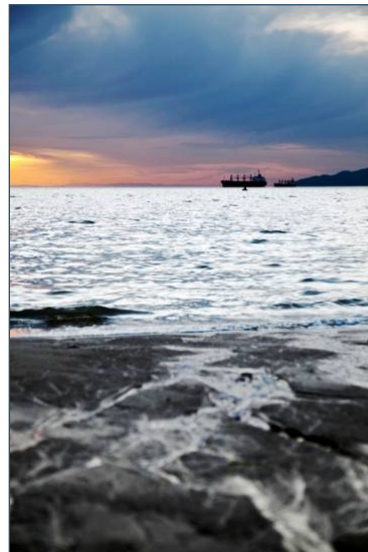


BUDGET 2010-EXPANDING THE PROGRAM

- IBAA legislation expanded for new international financial business (IFB):
 - Digital media distribution
 - Defined using digital media tax credit definitions (?)
 - Certification and trading of carbon credits
 - Will not apply to voluntary credits-only legislated credits (?)
 - 2 areas of activity: 1) broker trading of credits; 2) certification (validation and verification)
 - Clean technology
 - Working on the definitions
- Investment fund management activities added
 - Likely to be a minimum capital (\$50m?) requirement
 - Capital to be foreign based?
 - % of partners (% age?) will need to be foreign
- Effective dates ? Staggered (?)

BUDGET 2010-IB SPECIALISTS

- Existing Specialists will be grandfathered.
- Employees already here will not be eligible (no retroactive legislation)
- New category: Executive Specialist
 - Salary minimum of \$250k (may include salary and benefits) (?)
 - Maximum number per company and affiliates limited to 2
 - Refund schedule 100/100/75/50/25
 - No 70% time requirement, but the full salary expensed



BUDGET 2010-IB SPECIALISTS

Two categories of IB Specialists

1) Administrative support and back-up office services

- Specialists are subject to a salary minimum of \$100k
- Refund schedule 100/100/75/50/25
- Max of 4
- No time requirement, but salary expensed to the IFB

2) All other activities

- Specialists are subject to a salary minimum of \$100k
- Refund schedule 100/100/75/50/25
- 70% time requirement
- New businesses will qualify

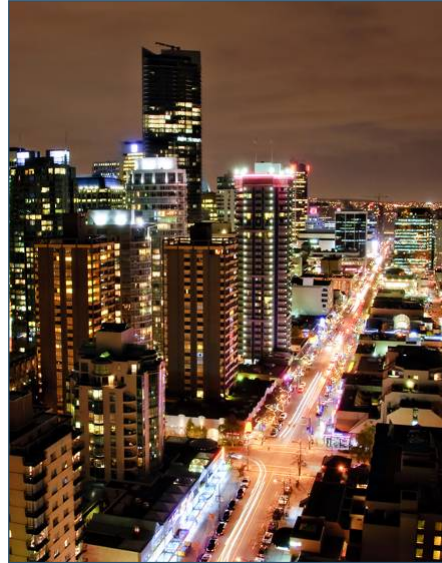
BUDGET 2010-CHANGING THE IB PROGRAM

- Qualifying patent activities clarified
- Section 110.5 election effect removed
- Deposits with other IFC members removed
- Lending activities restricted to arm's length
- Schedule III banks to be allowed starting April 2011 (?)



MONTREAL IFC CHANGES

- Major change
- Refundable tax credit
- Based on jobs not income
- Credit of \$20k max per employee
- Minimum 6 eligible employees
- Tax benefit to employees phased out to 2013



MONTREAL IFC CHANGES

Old	New
<ul style="list-style-type: none"> ▪ 75% reduction of 11.9% corporate tax refund ▪ 75% reduction of capital tax ▪ 75% reduction of Quebec Health Services payroll tax 	<ul style="list-style-type: none"> ▪ Refundable credit to 30% of eligible employee wages (max \$20k) ▪ Requirement for at least 6 specialists ▪ New system optional until 31/12/2012
<ul style="list-style-type: none"> ▪ 37.5% reduction in employment income (max \$50k) 	<ul style="list-style-type: none"> ▪ Employee benefit being phased out 37.5/30/20/10 for 2010/11/12/13/after
<ul style="list-style-type: none"> ▪ Foreign specialists 100/100/75/50/37.5 personal tax reduction 	<ul style="list-style-type: none"> ▪ Same
<ul style="list-style-type: none"> ▪ Partnerships eligible 	<ul style="list-style-type: none"> ▪ Partnerships no longer eligible after 2013

MONTREAL IFC CHANGES-IMPLICATIONS FOR IFC BC

- Fundamental shift in competitive regime
- Directly tied to jobs
- Will BC province be influenced (?)
- Refundable credit vs. tax reduction
- Start-ups and loss companies can claim
- Will be losers as changes transitioned



REFUNDS AND AUDIT

- Refunds will be processed using a risk-based approach.
- Risk assessment will subject new members to audit. Longer-term members will have refunds paid out in full or part within 60 days.
- Necessary audits will be done later (4 to 6 month timeframe). The held back amount will be sent after the audit is complete.
- Nil returns will no longer be audited unless there is a loss carryback that may affect a previous refund.
- CRA Statement of Account required as proof of payment of BC tax.
- Note Appendix 3 of the *Guide to Filling Out Either the IBA Tax Refund of a Corporation or the IBA Tax Refund of a Life Science Corporation (FIN 546/578)*. This is a checklist of required documents.
- Audit trails must be available, particularly regarding allocation of overhead, proof that one side is a non-resident, etc.

TRANSFER PRICING (Sec. 20)

Issues to consider when setting a transfer price

- Transactions between related parties and affiliated corporations must be valued at fair market value as if the parties were dealing at arm's length.
- Transfer pricing documentation accepted by CRA for purposes of ITA Sec. 247 would be acceptable.
- If the transaction is not at fair market value the Commissioner may set the transaction price to reflect fair market value.
- The IBAA does not establish guidelines, but adopts guidelines similar to those in *Income Tax Act* (Canada).
- No formal requirement for transfer pricing study but may have to demonstrate reasonable efforts were made in order to avoid penalties (see below).

Penalties for Offenses (Sec. 36 (3))

- Penalty of 10% of transaction price adjustment (exception if the taxpayer can prove "reasonable efforts" to determine appropriate arm's length price).
- Document! Details of transactions, analysis, etc. to support your claim.

RULINGS AND TECHNICAL INTERPRETATIONS

- Ministry issues written advance rulings and technical interpretations to explain technical matters relating to the IBAA.
- No cost, however, professional assistance is recommended.
- Previous rulings are available on the Ministry's website:
www.sbr.gov.bc.ca/business/Income_Taxes/International_Financial_Activity/rulings.htm.

Technical interpretations

- How would the IBAA apply to a generic fact situation
- Apply to hypothetical fact situations, non-binding
- "This letter is not a ruling and consequently is not binding on the Ministry of Finance (formerly Small Business and Revenue)."

RULINGS AND TECHNICAL INTERPRETATIONS

Advance Rulings

- Sets out how the IBAA applies to a clearly defined fact situation.
- Given on proposed transactions which are seriously contemplated and are not of a hypothetical nature.
- Cannot be provided on transactions already completed or on issues already under review or audit.
- “We provide advance rulings only where transactions are proposed. An advance ruling will not be given as we understand xxx is currently conducting the transactions referred to in your letter...”
- “Please note advance rulings are intended to enable taxpayers to decide on a particular course of action provided the relevant facts and the proposed transactions as set out in the application for the ruling and summarized above are correct and complete and the proposed transactions are carried out as described, our ruling is as follows:”
- “This advance ruling ceases to be valid if the law on which it is based is subsequently changed as a result of a court decision or if the legislation on which the ruling is based is subsequently amended.”

IFC BC INTERPRETATIONS

- Financing of foreign affiliates
 - Negative
 - Finance has amended the law to disallow non-arm's length lending
- Specialist for fund administration
 - Negative
 - Finance has amended law to allow
- Foreign payments bank products
 - Negative
 - Finance has amended law to disallow

INTEREST PAYABLE BY THE PROVINCE (Sec. 33 (2) and (3))

Amount

- Calculated daily, compounded monthly.
- Rate is 2% below Prime for the 3 months (as at 15th of month preceding the periods beginning Jan. 1, April 1, July 1, and October 1). Prime is determined as at 15th of the month preceding the 3-month period. (*IBA Regulation 3 (1)*)

Current rate 0.25%

Situations when interest is paid

- Province delays a refund payment
 - Interest begins accruing the earlier of
 - 61 days after all paperwork is received by the Ministry (proof of receipt will be helpful here in the event of a disputed date)
 - Or the date of the initial notice of determination

INTEREST PAYABLE BY THE REGISTRANT (Sec. 35 (2))

Amount

- Calculated daily, compounded monthly.
- Rate is 3% above prime (rate is set as of the 15th day of the month preceding the period specified) for the 3 months preceding.
- 3 months periods are Jan. 1, April 1, July 1, and October 1. (*IBA Regulation 3 (1)*)

Current rate 5.25%

Situations when interest is paid

- On excess amounts paid due to loss carrybacks—paid on portion recovered.
- For any portion recovered due to a penalty.
- Charged on the date the initial notice of determination for the taxation year was served until the excess amount is paid except for loss carrybacks.
- For loss carrybacks, interest is charged from the date of reassessment for loss carryback.

In setting up a factoring arrangement one of the key issues is to ensure that the non-arm's length arrangements are respected and the arrangements are not considered to be a sham. Since most factoring arrangements are profitable and generate excess cash, is it appropriate to allow the bank to sweep any excess cash as part of the banking arrangements on a daily or weekly basis?

- Should not impact structure
- Ensure cash distributions are properly documented and reflect existence of separate legal entities.
- Review some of the key factors to ensure arrangements are legally effective for program purposes such as written, executed contracts, regularly updated; proper charging of expenses at arm's length amounts; financing of factoring company with share equity.

A Quebec company is looking to set up a company registered under the IFC to earn some of its international life sciences patent income. They are wondering how many employees they would need to make the arrangements effective?

- Requirement to have a qualifying business
- Licensing of IP is a business (?)
- Can they do it with no employees and only contract back to parent company?
- What level of activity is required?
- Needs to be legally effective - not a sham.

A company has used a formula approach to determine its revenues for managing private equity investments. The formula pro-rates total revenues based on funds under investment internationally over total funds invested. An audit has suggested a new formula which uses funds invested internationally over total capital committed (whether invested or not). What recourse does a registrant have in dealing with this issue?

- Approach needs to be reasonable and should be consistent
- IB legislation provides no statutory methodology
- Review output vs. input based methodologies for apportioning revenues
- Written submission laying out arguments
- Meet with more senior officials
- Object to any reassessment
- Ability to appeal to Supreme Court

A company is earning IFB income. In a subsequent year the company incurs a loss in its non-IFB business and carries the loss back to the year in question. What will happen to the refund? Is there any opportunity to carry the IFB income forward to a subsequent year in order to preserve the low rate on this income stream?

- Requirement under S. 25 of IBAA to notify Province of any reassessment which affects the refund within 90 days
- Will have to adjust any refund and repay any amount
- No relief for any carry forward of IB income to future year
- Is this fair?
- Recommendation made by IFC BC but government felt it was too complicated.

What are the US tax risks associated with factoring US receivables with a US entity?

- Transfer pricing
- Deemed interest and financing arrangement subject to withholding tax
- Sham or legally ineffective

A registrant earns excess revenue on its qualifying factoring activities under the IBAA. The registrant decides to invest this excess cash and would like to make this revenue stream eligible under the IBAA. How should they do it?

- Proposed changes effective March 3, 2010 will not allow loans to non-arm's length companies to qualify; moreover, deposits with other IFC members will not qualify after March 3, 2010.
- Amounts can be used to buy securities issued by a non-resident or any security from a non-resident broker.
- Be careful not to use non-resident broker that is subsidiary of Canada Bank or other Canadian financial institution (See definition of non-resident broker in 2(1))

A registrant has made a claim for a refund but the claim has been outstanding for 6 months. What can be done to expedite payment?

- No statutory requirement under IBAA for Province to pay refund within a prescribed number of days (not even “due dispatch”)
- Ensure IB return is complete and that there is evidence of payment of federal and BC taxes
- Normal procedure is to conduct an audit which can delay the process
- Contact senior official to push for payment
- Advise IFC BC

A registrant has invested temporary surplus cash from its qualifying business with another IFC member. In order for the interest income to be eligible as a qualifying activity the deposit must be in respect of the IFC business of the depositor. What documentary evidence needs to be retained for this purpose?

- Province has changed administrative position and now requires that registrants prove deposit in respect of depositor's IFC business
- Very difficult to comply
- Difficult to audit
- IBAA suggests symmetry
- Query - would a letter from depositor that interest formed as part of “cost of capital” calculation for IFB suffice?
- Law now has repealed this provision effective March 3, 2010

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