

# Minding

# YOUR BUSINESS

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## Coping With Economic Changes

The upheaval from the credit crunch and the economic distress will strengthen some companies and create financial chaos in others.

While economists continue to debate whether or not the US economy is in a recession, it certainly feels like one to the auto industry, forestry and the real estate sector.

Businesses should focus on economic issues related to their own business. What this means is to understand how they can keep costs down and better manage their resources. Businesses should review their credit policies, valuating terms and reviewing who to extend credit to rather than realizing a bad debt from extending credit to a customer with credit risk just for the sake of making a sale.

Given these uncertain times, it may be prudent to downsize or take on smaller projects and become more profitable. Firms should probably not start new ventures.

In the US the major cost cutting and downsizing is in wages. There is danger also in this approach because when the economy recovers there will be difficulty in finding the appropriate human resources.

Majewski Shaler & Co. can assist you in managing your business, how to keep your costs down and improve your cash flow through proper budgeting.

*Dariusz Szlachetka*  
*Bonnie Shaler*

From The Desk Of

## Correcting Errors in Your Tax Filing

When Canadians pay taxes, the declaration of income and expenses is voluntary. But income and expenses are sometimes reported incorrectly; the taxpayer, whether individual or corporate, may not recognize the mistake until well after filing.

To facilitate the correction of such errors, the Canada Revenue Agency (CRA) has established the Voluntary Disclosure Program (VDP), which allows taxpayers to "make disclosures to correct inaccurate or incomplete information, or to disclose information not previously reported." Under this program, taxpayers can correct previous filings without fear of penalty or prosecution, if the changes are accepted.



### Honest Errors do not Bring the Wrath of the Tax Department

In practice, honest errors realized after filing are corrected by simply writing to the CRA; the VDP is used where there has been a misrepresentation or gross negligence on the part of the filer.

### Potential Reduction of Penalties and Interest

#### Penalty Relief

Disclosures accepted by the CRA as meriting relief under VDP guidelines will be considered valid and the taxpayer will not be charged penalties or prosecuted.

#### Interest Relief

If a disclosure is accepted by the CRA, the Minister may also grant partial interest relief on assessments for reporting periods preceding the three most recent years of required filings.

### When the VDP is Recommended

Individuals and corporations are permitted to seek relief from penalty or prosecution when they have either claimed ineligible expenses or failed to:

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.....  
: "Draw a circle, not a heart around the one you love :  
: because a heart can break but a circle goes on forever." :  
: - Unknown :  
.....

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*We recognize that while "accounting" is an integral part of your business, it is only a part of your business. Our approach to accounting doesn't miss the forest for the trees or the people for the numbers. Our dedicated professionals will provide you with the creative, proactive and timely solutions to assist you in responding to the daily challenges confronting your business.*



CHARTERED ACCOUNTANTS

1730 West 2nd Avenue  
Suite 206  
Vancouver, B.C. V6J 1H6  
(Between Burrard and Pine)  
Tel: (604) 662-8786  
Fax: (604) 662-8744  
email: info@ms-co.com  
www.ms-co.com

**Daniel Majewski, B.Comm., CA, TEP**

*Partner*

**Barrie Shaler, B.Comm., CA**

*Partner*

**Sandra A. Rodrigues, CGA, TEP**

*Principal*

**Milynda Taylor**

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## Correcting Errors in Your Tax Filing

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- Fulfill their obligations under the applicable act
- Report taxable income
- Remit source deductions of their employees
- Report GST/HST, (including undisclosed liabilities or improperly claimed refunds or rebates, unpaid tax or net tax from a previous reporting period)
- File information returns
- Report foreign-source income taxable in Canada

### When the VDP is Not Recommended

There are also specific areas in which the taxpayer should not use the VDP; specifically, the CRA will not consider:

- Returns with no taxes owing or with refunds expected
- Elections of provisions in acts administered by the CRA that entitle the taxpayer to choose specific treatment for certain types of taxable transaction
- "Advance pricing arrangement": an agreement between the Minister of National Revenue and a taxpayer covering certain taxable transactions between the taxpayer and a non-resident entity that predetermines an appropriate transfer pricing method and its application to specific transactions for a stated period using certain terms and conditions
- "Rollover provisions": an election allowing deferral of income that would otherwise become taxable when property is transferred to a taxable Canadian corporation
- "Bankruptcy returns": these returns are required to be filed in the year of bankruptcy
- Post-assessment requests for penalty and interest relief because they will be considered as retroactive tax planning

It is also important to note that a disclosure will not be considered voluntary in certain circumstances,

including if the taxpayer is aware of an impending audit or investigation.

### 2005 and 2007

For submissions made on or after January 1, 2005, relief is limited to any reporting period ended within the 10 years prior to the end of the calendar year in which the submission is filed. For example, if relief was applied for on May 1, 2007, it would be available only for 1997 and subsequent taxation years.

For submissions concerning GST/HST or excise taxes the limitation affects only those submissions made on or after April 1, 2007, for reporting periods ended within the previous 10 years.

### Each Submission Will Stand on its Own Merit

The Minister is not obligated to grant relief under the VDP provisions; each request will be reviewed and decided on its own merit. If relief is denied or granted only in part, the CRA will provide the taxpayer with the reasons for the decision.

### Named and No-Name Disclosure

There are two methods of submitting documentation: Named and No-Name. Both approaches require the same information but differ in the time of disclosing the taxpayer's identity.

Under the Named method, the identity of the taxpayer is stated on the submitted disclosure forms.

The No-Name method allows the taxpayer to have informal, anonymous, general discussions with a representative of the VDP that bind neither party. After submission of all the required documentation, the CRA can, if requested, review the information and indicate any possible tax implications. If this information is contradicted by facts obtained after disclosure of the taxpayer's identity, the CRA may discard its preliminary advice.

The CRA will only provide relief under the provisions of a No-

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# Tax Tips & Traps

## REPAIR vs. CAPITAL

In a September 3, 2008 External Technical Interpretation, CRA notes that there are no fixed rules when determining whether an expenditure is on account of income or capital. The jurisprudence suggests a number of guidelines but no one guideline is determinative. The main four guidelines are "enduring benefit", "maintenance or betterment", "integral part or separate asset" and, "relative value".

With respect to whether the expenditure restores a capital property (deductible) or is a betterment (capital), Interpretation Bulletin 128R, Paragraph 4(b), notes that where all of the expenditure, but for a minor part, is of a current nature, the CRA is prepared to treat the whole expenditure as being of a current nature. Also, the Courts have found the repair cost to be of a current nature, generally in cases where the cost only represents a low percentage (lower single digit) of the fair market value of the whole property. CRA also notes that where the taxpayer is required to incur an expenditure to comply with an Order made by a municipal, provincial or federal authority, this is not determinative of the issue of whether the expenditures are on income or capital account.

In this Technical Interpretation, CRA concluded that amounts incurred to replace the distribution line of the septic tank in a motel are on income account as there was likely no betterment or improvement of the sewage installation system beyond its original condition.



## TAX-FREE SAVINGS ACCOUNT (TFSA)

In a September 8, 2008 Release, CRA mentioned some points regarding the TFSA including:

1. TFSA issuers may prepare most of the required administrative activities in advance of January 1, 2009 provided the document states that the arrangement will not come into effect until January 1, 2009 and that no TFSA contributions are made until 2009.

2. A TFSA Plan Holder can name his/her spouse or common-law partner as the successor holder on the TFSA Plan documents such that the Plan will transfer to the spouse upon the death of the Plan Holder.

3. Individuals will be allowed to make in kind contributions to their TFSA, provided that the property is a qualified investment. As is the case with RRSPs, the individual will be considered to have disposed of the property for its fair market value. If the fair market value exceeds the cost of the property, the individual will have to report the capital gain on their tax return. If the cost

exceeds the fair market value the resulting capital loss cannot be claimed.

## Editor's Comment

Some organizations such as ING Direct and Scotiabank are already placing TFSA products in the marketplace to take effect January 1, 2009.

## CORPORATE REORGANIZATION

### Value of Voting Non-Participating Shares

CRA's Income Tax Technical News No. 38 (September 22, 2008) notes that CRA does not have an established position on valuing different types of property. Information Circular 89-3 outlines the valuation principles that CRA generally follows in the valuation of securities and intangible property of closely held corporations for income tax purposes.

CRA notes that when they value different classes of shares in a company, they generally determine the "en bloc" fair market value and then allocate the value to each class in isolation. The fair market value of each class of shares must be determined on its own merits according to the individual rights and restrictions of each class. In other words, CRA considers what a hypothetical arm's length purchaser would be willing to pay for a particular class of shares based on the rights, restrictions and conditions, which ultimately affect the economic benefits to be derived from ownership.

Given the above, there may be many factors, which influence the value of voting control.

Name approach if the anonymous taxpayer ultimately provides a name. The taxpayer must provide the name within 90 days of the effective date of disclosure (EDD). This date is considered the earlier of:

- The date the CRA receives a complete and signed Form RC 199 Taxpayer Agreement (available at [www.cra-arc.gc.ca](http://www.cra-arc.gc.ca)); or
- The date a letter, signed by the taxpayer or the taxpayer's authorized representative and containing information similar to that in Form RC 199, is received by the CRA.

### Disclosure Requirements

A disclosure is not considered valid unless it is:

- Voluntary
- Complete and accurate
- Subject to a penalty if not made under the protection of the VDP
- Providing information at least one year past its due date or correcting a previously filed return

Taxpayers must send in a written submission using Form RC 199 to initiate the disclosure. You must use Form RC199 or provide similar information in order to avoid a delay in the review.

To support a disclosure submission, the taxpayer must provide the following information:

1. Name, address, telephone number, social insurance number, partnership number, trust account number, business number, licence number, GST/HST registration number or any other identification tax number assigned by the CRA to the taxpayer. (Naturally, this information is not required in a No-Name disclosure.)
2. Postal code to determine the regional Tax Office that will handle the application. In the case of a if a No-Name disclosure, only the first three characters of the taxpayer's postal code are required.
3. Address of the taxpayer's

authorized representative (if any), including telephone and fax numbers (if applicable).

4. Under the No-Name method, gender and age, if the taxpayer is an individual.
5. Reporting period(s).
6. amount of the disclosure (where applicable).
7. Type of return(s) involved: personal T1, GST/HST, corporate T2, trust T3, etc.
8. Type of information return(s) and/or slip(s) involved ( T3, T4, T1134, T1135).
9. Type of omission (business income, unremitted GST/HST, investment income, pension income, capital gain, etc.).
10. Reason for the omission.
11. Primary business activity.
12. An explanation of how the taxpayer considers each of the four validity conditions as set out under ICOO-1R2 (dated October 22, 2007) of the information circular have been met.

### Avoid Vagueness

The submission must include sufficient detail to allow the CRA to verify the facts. Taxpayers and/or their authorized representatives are expected to make available all documents, records, and books of account, as well as any other required information.

### Where to File

The disclosure should be forwarded to the Assistant Director, Enforcement Division of the regional tax services office for the taxpayer's home address or, if the taxpayer is a corporation, the operating address.

### Seek Professional Assistance

Since timing of any submission is critical to obtaining relief from penalties and interest, it is in the best interest of taxpayers to rely on a professional to represent their interests. Please contact Majewski Shaler & Co. if you think that a VD may be appropriate under the circumstances.

CRA are not aware of any case law that deals specifically with the allocation of value amongst various classes of shares where voting rights were separated from participation.

It is the opinion of CRA that a hypothetical purchaser would be willing to pay some amount for the voting control of the company. However, the answer to this question will depend upon facts and circumstances of each case.

### Editor's Comment

For example, if the voting non-participating shares are non-transferable this may reduce the value - if any.

## YEAR-END TAX PLANNING

Some 2008 year-end tax planning tips include:

- Certain expenditures made by individuals by December 31, 2008 will be eligible for 2008 tax deductions or credits including: moving expenses, child care expenses, safety deposit box fees, charitable donations, political contributions, medical expenses, alimony, eligible employment expenses, union, professional, or like dues, carrying charges and interest expenses, certain public transit amounts, and children's fitness amounts.

- You have until March 2, 2009 to make tax deductible Registered Retirement Savings Plan (RRSP) contributions for the 2008 year.

Consider contributing to a spousal RRSP to achieve income splitting in the future.

- If you own a business, consider paying a reasonable salary to family members for services rendered to the business.

Contact Majewski Shaler & Co. for assistance in managing 2008 personal income.