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Advisory Bulletin No. 23/06/11 – Arm’s length relationships

PURPOSE

This bulletin provides information to customers and BC Timber Sales (BCTS) staff regarding how the concept of arm’s length relationships should be applied in respect of applications for registration as a BCTS enterprise and timber sale licences (TSLs).

GUIDANCE

Legislative authority

Section 81 (5) and (6) of the *Forest Act* authorises the timber sales manager to refuse an application for a TSL on the grounds that the applicant, or a person not at “arm’s length” from the applicant, has not paid stumpage or other money payable to government, or has not made arrangements satisfactory to the revenue minister to pay the stumpage or other money.

Similarly, section 7 of the BCTS Regulation authorises a timber sales manager to refuse to register a person as a BCTS enterprise on the grounds that the applicant, or a person not at arm’s length with the applicant, has not paid stumpage or other money payable to government, or has not made arrangements satisfactory to the revenue minister to pay the stumpage or other money.

Non current account declaration

The Application and Tender form for all TSLs now requires all bidders to declare if they have a non-current *Forest Act* related account with government (i.e., accounts 28 days or greater past due), inclusive of debts owed by person’s not at arm’s length with the applicant and inclusive of any debts covered under repayment plans established with the revenue minister. In the event a person successfully acquires a TSL based on erroneous information contained in this declaration a timber sales manager could, pursuant to authority set out in section 78 of the *Forest Act*, decide that the circumstances warrant enforcement such as suspension or cancellation of the TSL or disqualification as a BCTS enterprise.

Arm’s length defined

The term “arm’s length” can be confusing and is meant to imply a business-like relationship or a not overly close relationship; the opposite of “arm’s length” would be an intimate relationship typified by mutually beneficial arrangements or familial connections (this is referred to as “not at arm’s length” or “non-arm’s length”). Regardless, timber sales managers evaluating information contained in



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TSL or registration applications are advised to apply the “arm’s length” concept in a manner consistent with how the term is defined in section 251 of the federal *Income Tax Act* (reference Appendix A of this bulletin, <http://laws-lois.justice.gc.ca/eng/acts/l-3.3/page-454.html> and federal Interpretation Bulletin IT-419R2, <http://www.cra-arc.gc.ca/E/pub/tp/it419r2/it419r2-e.html>). In doing so, timber sales managers should give consideration to factors such as, but not necessarily limited to:

- Established policy (e.g., TSL deposit administration policy 19.1);
- The amount and duration that an account may be non-current;
- The applicant’s past performance with respect to repayment of Crown debt; and,
- The nature of the outstanding account.

To illustrate, and by way of the following TSL auction example, a timber sales manager may decide to accept an application for a TSL from a person where individual’s non current account balance is immaterial or that account has been current until shortly before the tender opening. Similarly, where the applicant does not have a history of outstanding accounts the outstanding account is the result of the actions of a third party not paying stumpage on behalf of the applicant.

Conversely, a timber sales manager may decide to refuse to accept an application for a TSL from a person who is found not to be at arm’s length with a person that has material non current account and both person’s have a history of poor debt repayment performance. In making his or her decision the question the timber sales manager should always ask is “*which ministry objective am I attempting to further by rendering this decision?*”

Effect of receivership and bankruptcy

The rules respecting receivership, bankruptcy and non arm’s length are complex and can differ significantly depending on the specific circumstance that relate to a given person (i.e., an individual or a corporation) and application for a TSL or registration as a BCTS enterprise. As such, it is recommended that BCTS staff obtain legal advice through appropriate channels when faced with this type of situation before making a section 81 of the *Forest Act* or section 7 of the BCTS regulation determination.

Confirming a person’s government account status

As a general rule, BCTS staff should undertake a review of the Accounts Receivable Management System, the Client Management System, the Forest Tenure Administration System and BCTS Admin as part of their due diligence standard operating procedures for evaluating TSL and registration applications.



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BCTS staff and the public can ascertain a person's current forest account status by visiting the Ministry of Finance web-site located at <http://www.rev.gov.bc.ca/frb/index.htm> or by contacting one of the following Ministry of Finance staff:

Forest Revenue Operations Contacts			
Forest Revenue Operations - Victoria			
		Phone	Fax
David Marson	Manager, Forest Revenue Operations	250 387-8623	250 356-5604
Carl Jensen	Supervisor, Forest Revenue Operations	250 387-1720	250 356 5604
Melodie Louie	General Inquiries	250 387-3376	250 356-5604
Margaret-Ann Cotton	General and Trust Inquiries	250 356-8978	250 356-5604
Marg Krowec	EFTs and PC/Tel Banking	250 387-1128	250 356-5604
<u>Southern Interior Forest Region</u>		email: FIN_REV_G_FRB (RSI) FIN:EX	
Larry McLean	Southern Interior Inquiries & Trust	250 356-0454	250 356-5604
Magda Kernel	Southern Interior Inquiries & Trust	250 356-0636	250 356-5604
<u>Northern Interior Forest Region</u>		email: FIN_REV_G_FRB (RNI) FIN:EX	
Kelly Werbowski	Northern Interior Inquiries & Trust	250-387 5227	250-356-5604
<u>Coast Forest Region</u>		email: FIN_REV_G_FRB (RCO) FIN:EX	
Dean Cameron	Coast Inquiries & Trust	250 356-1841	250 356-5604
Forest Revenue Collections			
Deb O'Neill	Collection Inquiries	250 356-0062	250 356-5604
Judy Fenwick	Collection Inquiries	250 828-4110	250 371-3880
Dale Gilbert	Collection Inquiries	250 847-7675	250 847-7343
Lindsay Morris	Collection Inquiries	250-356-6748	250 356-5604
Mary Lou Bannister	Collection Inquiries	250 387-1906	250 356-5604



Ministry of Forests,
Lands and Natural Resource
Operations



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Additional Ministry of Finance contact information can be found at:

<http://frb.rev.gov.bc.ca/contacts.htm>.

CONTACTS

For further information regarding this bulletin please contact your local timber sales office.

Excerpt – *Income Tax Act* (Canada)

Section 251 of the *Income Tax Act*

This section is the federal statutory provision for determining arm's length relationships.

251. (1) For the purposes of this Act,

- a. related persons shall be deemed not to deal with each other at arm's length;
- b. a taxpayer and a personal trust (other than a trust described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1)) are deemed not to deal with each other at arm's length if the taxpayer, or any person not dealing at arm's length with the taxpayer, would be beneficially interested in the trust if subsection 248(25) were read without reference to sub clauses 248(25)(b)(iii)(A)(II) to (IV); and
- c. where paragraph (b) does not apply, it is a question of fact whether persons not related to each other are at a particular time dealing with each other at arm's length.

Definition of "related persons"

- (2) For the purpose of this Act, "related persons", or persons related to each other, are
- a. individuals connected by blood relationship, marriage or common-law partnership or adoption;
 - b. a corporation and
 - i. a person who controls the corporation, if it is controlled by one person,
 - ii. a person who is a member of a related group that controls the corporation, or
 - iii. any person related to a person described in subparagraph 251(2)(b)(i) or 251(2)(b)(ii); and
 - c. any two corporations
 - i. if they are controlled by the same person or group of persons,
 - ii. if each of the corporations is controlled by one person and the person who controls one of the corporations is related to the person who controls the other corporation,
 - iii. if one of the corporations is controlled by one person and that person is related to any member of a related group that controls the other corporation,
 - iv. if one of the corporations is controlled by one person and that person is related to each member of an unrelated group that controls the other corporation,
 - v. if any member of a related group that controls one of the corporations is related to each member of an unrelated group that controls the other corporation, or

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- vi. if each member of an unrelated group that controls one of the corporations is related to at least one member of an unrelated group that controls the other corporation.

Corporations related through a third corporation

- (3) Where two corporations are related to the same corporation within the meaning of subsection 251(2), they shall, for the purposes of subsections 251(1) and 251(2), be deemed to be related to each other.

Relation where amalgamation or merger

- (3.1) Where there has been an amalgamation or merger of two or more corporations and the new corporation formed as a result of the amalgamation or merger and any predecessor corporation would have been related immediately before the amalgamation or merger if the new corporation were in existence at that time, and if the persons who were the shareholders of the new corporation immediately after the amalgamation or merger were the shareholders of the new corporation at that time, the new corporation and any such predecessor corporation shall be deemed to have been related persons.

Amalgamation of related corporations

- (3.2) Where there has been an amalgamation or merger of 2 or more corporations each of which was related (otherwise than because of a right referred to in paragraph 251(5)(b)) to each other immediately before the amalgamation or merger, the new corporation formed as a result of the amalgamation or merger and each of the predecessor corporations is deemed to have been related to each other.

Definitions concerning groups

- (4) In this Act,

"related group"

"related group" means a group of persons each member of which is related to every other member of the group;

"unrelated group"

"unrelated group" means a group of persons that is not a related group.

Control by related groups, options, etc.

- (5) For the purposes of subsection 251(2) and the definition "Canadian-controlled private corporation" in subsection 125(7),
 - a. where a related group is in a position to control a corporation, it shall be deemed to be a related group that controls the corporation whether or not it is part of a larger group by which the corporation is in fact controlled;
 - b. where at any time a person has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently,

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- i. to, or to acquire, shares of the capital stock of a corporation or to control the voting rights of such shares, the person shall, except where the right is not exercisable at that time because the exercise thereof is contingent on the death, bankruptcy or permanent disability of an individual, be deemed to have the same position in relation to the control of the corporation as if the person owned the shares at that time,
 - ii. to cause a corporation to redeem, acquire or cancel any shares of its capital stock owned by other shareholders of the corporation, the person shall, except where the right is not exercisable at that time because the exercise thereof is contingent on the death, bankruptcy or permanent disability of an individual, be deemed to have the same position in relation to the control of the corporation as if the shares were so redeemed, acquired or cancelled by the corporation at that time;
 - iii. to, or to acquire or control, voting rights in respect of shares of the capital stock of a corporation, the person is, except where the right is not exercisable at that time because its exercise is contingent on the death, bankruptcy or permanent disability of an individual, deemed to have the same position in relation to the control of the corporation as if the person could exercise the voting rights at that time, or
 - iv. to cause the reduction of voting rights in respect of shares, owned by other shareholders, of the capital stock of a corporation, the person is, except where the right is not exercisable at that time because its exercise is contingent on the death, bankruptcy or permanent disability of an individual, deemed to have the same position in relation to the control of the corporation as if the voting rights were so reduced at that time; and
- c. where a person owns shares in two or more corporations, the person shall, as shareholder of one of the corporations, be deemed to be related to himself, herself or itself as shareholder of each of the other corporations.

Blood relationship, etc.

- (6) For the purposes of this Act, persons are connected by
- a. blood relationship if one is the child or other descendant of the other or one is the brother or sister of the other;
 - b. marriage if one is married to the other or to a person who is so connected by blood relationship to the other;
 - (b.1) common-law partnership if one is in a common-law partnership with the other or with a person who is connected by blood relationship to the other; and
 - c. adoption if one has been adopted, either legally or in fact, as the child of the other or as the child of a person who is so connected by blood relationship (otherwise than as a brother or sister) to the other.