



AFFIDAVIT #1 OF GLENN WALSH
SWORN JULY 3, 2012

NO. VLC-S-S-104826
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

GLENN WALSH

PLAINTIFF

AND:

BDO DUNWOODY LLP BDO CANADA SRL and
JAS BUTALIA

DEFENDANTS

AFFIDAVIT

I, GLENN WALSH, P.Eng., Businessman, of #12, Cathedral Street, St. Paul's Bay,
Malta, SPB 09 MAKE OATH AND SAY AS FOLLOWS:

1. I am Plaintiff in this action and I have personal knowledge of the facts and matters set out hereafter save and except where stated to be on information and belief in which case I verily believe the same to be true.
2. Jas Butalia advised me on August 17, 1998 to depart Canada on a date prior to December 31, 1998. In reliance upon this advice, I departed Canada on December 29, 1998. I attached as Exhibit 1 hereto a copy of my notes made during the conversation. This advice was confirmed on subsequent occasions.
3. I did not receive, nor until these proceedings, review, the CRA letter dated May 6 2002 made exhibit 2 hereto.
4. I did not receive, nor until these proceedings, review, the CRA letter dated July 8, 2002 made Exhibit 3 hereto.

18/11

5. I did not receive, nor until these proceedings, review, the CRA letter dated September 5, 2002 made Exhibit 4 hereto.

6. Jas Butalia did not explain to me then or at any time before then or afterwards that because of my departure on December 29, 1998 I was not entitled, or stood at significant risk of not being entitled, to deduct the interest paid to CIBC December 31, 1998 in calculating my net income for 1998.

7. I did not receive, nor until these proceedings, review, the letter dated September 17, 2002 made Exhibit 5 hereto sent by the defendant Jas Butalia to me at my Malta address.

8. I did not receive, nor until these proceedings, review, the CRA letter dated September 20, 2002 made Exhibit 6 hereto.

9. I was relying upon Jas Butalia to deal with these matters and to advise me as required to keep me informed on points that were material. My relationship with him as a professional was such that he was, and bore the professional responsibility as, the master of my and the corporations' tax and tax planning affairs. This included being responsible for and being in charge of dealing with the reassessments CRA made against me and the corporations.

10. I received the memorandum dated September 23, 2002 from Jas Butalia made Exhibit 7 hereto. Meanwhile, Dave Horne sent an e-mail to Jas Butalia to which he responded on September 26, 2002. A copy of the e-mail and response by e-mail is made Exhibit 8 hereto.

11. Attached as Exhibit 9 hereto is a copy of my hand written memo to Jas Butalia made October 29, 2002. I attach as Exhibit 10 hereto is a copy of an e-mail from Jas Butalia responding thereto.

12. I believe I became aware on December 3, 2002 in a conversation with Jas Butalia (of which I made a note) CRA was not accepting my 1998 and 1999 tax returns as filed and it would be necessary to dispute this in a formal process. This was not unexpected because it was anticipated from the beginning that CRA would pay attention to the tax returns filed on my behalf for those years and investigate the departure trade (as it has been referred to in these proceedings) and the Employee Profit Sharing Plan distributions to me by certain corporations, namely, Conex Services Inc., Tercon Contractors Ltd. and Elbee Development Corp. I understood these

transactions likely would be challenged by CRA based upon GAAR and that there was a risk that CRA would be successful in its challenge.

13. Jas Butalia advised me to see Joel Nitikman as a lawyer was required to file the objection. I did so. I saw him for the first time on January 14, 2003 by which time, apparently, he had, on January 6, 2003 filed a Notice of Objection a copy of which is made Exhibit 11 hereto. I understand that he sent an e-mail to Dave Horne after our meeting stating that he had provided me with a copy and requesting certain documents and information. That e-mail is made Exhibit 12 hereto. For that reason, I admitted it was given to me, although I have no recollection of that or of reading it.

14. What stands out to me about my meeting with Joel Nitikman was that about the first thing he said was to the effect, "Do you think any judge in Canada will believe this?" which surprised me and which I interpreted to mean he felt CRA had a strong position on GAAR. I am certain he did not explain to me that the date of my departure from Canada on December 29, 1998 jeopardized my position with CRA. Had he done so it is certain I immediately would have sought answers, particularly because I had taken every precaution to act upon Jas Butalia's advice on the date of my departure from Canada. I have reviewed the hand written notes made by Joel Nitikman contained in his file (which is in the possession of my counsel) a copy of which is made Exhibit 13 hereto. They are almost entirely focused on the issue of the loans made to Erwin Braich and whether or not I was entitled to claim losses as a result of nonpayment thereof. They disclose no advice or explanation concerning the departure date. Nor does his email to Dave Horne above referred to (Exhibit 12).

15. Following this time, in the spring of 2003, I sought advice from Bennett Jones LLP in Calgary and particularly from Chris Simard. He previously had provided advice in connection with the corporations and the implications for them and for the directors and officers resulting from the execution of the tax plan.

16. As I understood it at the time, my potential tax liability in the event CRA were successful was approximately \$25 million including interest. I was concerned about what CRA could do to me as a nonresident and asked whether CRA would petition me as a non-resident into bankruptcy. I was given to understand that CRA could not collect a tax debt from a non-resident and that such debts were not enforceable in other jurisdictions. Because of the circumstances at

the time, I was considering whether I should remain a non-resident of Canada. Originally, based upon the advice Jas Butalia, I understood becoming a non-resident did not foreclose a decision in future to become a resident of Canada again after an appropriate interval. I considered whether I should negotiate with CRA a settlement in order that I could again become a resident of Canada, something which was untenable if the position of CRA were to prevail. I attach as Exhibit 14 hereto a copy of handwritten notes of Jas Butalia produced in these proceedings apparently during a meeting I had with him, Curtis Stewart and Chris Simard March 21, 2003.

17. Attached hereto as Exhibit 15 is a copy of an e-mail from Joel Nitikman to Dave Horne dated May 7, 2003 produced from the defendants' files in these proceedings.

18. Attached hereto as Exhibit 16 is a copy of an e-mail from Dave Horne to Joel Nitikman confirming that I approved his proposed meeting in Ottawa with representatives of CRA. I attach hereto as Exhibit 17 is a copy of an e-mail from Joel Nitikman to Dave Horne and Jas Butalia in that respect.

19. On June 27, 2003 I apparently spoke with Joel Nitikman, Jas Butalia and Dave Horne. My note indicates Joel Nitikman advised he had met with CRA and its position was that it was "up to us" to make an offer of settlement. It was the advice of Joel Nitikman and his partner Patrick Boyle (apparently formerly a member of the GAAR committee) that CRA might accept \$.50 on the dollar. I attach a copy of my note as Exhibit 18 hereto.

20. I attach as Exhibit 19 a copy of a letter from Joel Nitikman dated July 14, 2003 which sets out what he proposes I consider in making a settlement offer to CRA.

21. I attach as Exhibit 20 a copy of an e-mail from Dave Horne to Jas Butalia followed by his response on July 22, 2003.

22. Attached as Exhibit 21 is a copy of an e-mail from Dave Horne to Chris Simard. It inaccurately states I was "contemplating" personal bankruptcy. In fact, I was asking for advice on bankruptcy issues. Advice was provided by Chris Simard of Bennett Jones LLP in Calgary. I attach as Exhibit 22 a copy of the research memorandum prepared for me and for Tercon Contractors Ltd.

23. I attach as Exhibit 23 an e-mail from Dave Horne to Curtis Stewart and Jas Butalia on December 1, 2003. I had been advised that after an interval of being non-resident, I would

always have the option to return. By this time I had been non-resident for five years. I was frustrated with offshore life and with the CRA issues which remained unresolved and an impediment to a return anytime soon.

24. I attach as Exhibit 24 a copy of an e-mail from Joel Nitikman which advises that CRA intended in due course to issue Notices of Confirmation and that would be necessary for me to appeal to the Tax Court of Canada.

25. On February 19, 2004 I have a note of a telephone conversation with Jas Butalia which indicates that I felt I still needed further advice on certain issues and was concerned that I had not been given the advice I required. I attach my notes of this telephone conversation as Exhibit 25 hereto.

26. Apparently, as a result of this conversation, Jas Butalia sent on the same day an email to Curtis Stewart recovered from Curtis Stewart's files. A copy is attached as Exhibit 26 hereto.

27. I attach as Exhibit 27 hereto an e-mail to Jas Butalia from Curtis Stewart dated February 24, 2004 which resulted from the aforesaid e-mail to him.

28. I attach as Exhibit 28 hereto a facsimile dated March 17, 2004 from Dave Horne to Curtis Stewart raising certain questions. This document is from Curtis Stewart's files and it appears handwritten notations in the margin reflect a conversation in relation to these questions.

29. I attach as Exhibit 29 hereto a memorandum from Curtis Stewart and Chris Simard addressed to Jas Butalia, Dave Horne, Mack Smith and myself dated March 11, 2004.

30. It was evident to me that bankruptcy was not an option.

31. In or about July 2004 I retained Curtis Stewart of Bennett Jones LLP in Calgary to represent me in an appeal to the Tax Court of Canada. I understand he made arrangements with Joel Nitikman to have the file transferred to him and that Joel Nitikman sent to him on August 31, 2004 a copy of a CRA document entitled "auditor's report". I confirm it never had been provided to me. I had explained to Jas Butalia I did not like Joel Nitikman and that I was concerned he was so negative, contrary to his (Jas Butalia's) advice. Jas Butalia's response was that Curtis Stewart who was representing the corporations should take over and prepare my appeal. Jas Butalia had been responsible on my behalf for instructing Joel Nitikman and responsible to ensure I received proper advice. Jas Butalia never said anything to me which qualified his

original advice when I agreed to the Tax Plan in the spring of 1998 which was: he had reviewed the Income Tax Act in detail and his Taxation Plan complied with its provisions in all respects and should work; the CRA likely would challenge the Tax Plan under GAAR because of the amount involved; but such a challenge should not succeed, although this could not be guaranteed.

32. I attach as Exhibit 30 hereto a copy of an e-mail sent on May 17, 2006 by Curtis Stewart to Jas Butalia and Dave Horne apparently reflects the status of matters at that time.

33. I attach as Exhibit 31 hereto a copy of my e-mail sent November 3, 2006 to Curtis Stewart and Jas Butalia.

34. I attach as Exhibit 32 hereto a copy of the memorandum dated August 15, 2007 from Jas Butalia to me. The reason for this memorandum was the proposed disposition of the controlling interest in Tercon Construction Inc. and there being apparently an issue as to the cost base of certain equipment involved in the transaction.

35. I attach as Exhibit 33 hereto is a copy of a memorandum prepared by Curtis Stewart dated February 6, 2008 setting forth the outstanding tax issues and potential settlement options. The memorandum also reviews the settlement discussions had between Stewart Curtis and CRA.

36. As described in the Affidavit #1 of Curtis Stewart, meetings were held in February 2008 to address settlement with CRA. I was advised by Curtis Stewart of the decision in the *Grant* case and that it meant I was bound to lose my tax appeal. Until being so advised by him, as described in his Affidavit aforesaid, I was not aware that the date of my departure on December 29, 1998 was or might well be fatal to my entitlement to deduct, in determining my net income for 1998, the interest paid to CIBC December 31, 1998. Upon Curtis Stewart's advice above, I immediately recognized the advice Jas Butalia gave to me in 1998 as to the date on which I should depart Canada was flawed and that I had a claim against him and BDO.

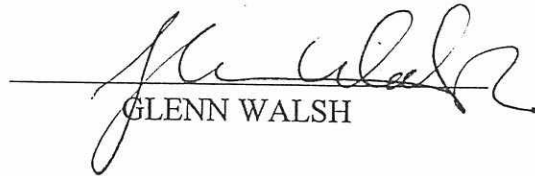
37. I attach as Exhibit 34 hereto a copy of my e-mail to Curtis Stewart on February 11, 2008 the subject of which is the magnitude of my claim against Jas Butalia and BDO resulting from the failed the departure strategy. I also attach as Exhibit 35 hereto a copy of a voicemail recorded by Curtis Stewart on the same day. Again it reflects my thought process in assessing the financial implications of the flawed advice by Jas Butalia and his and BDO's liability. I also attach as

Exhibit 36 hereto a copy of my e-mail to Curtis Stewart on March 7, 2008 and to whom I had sent what I felt were costs recoverable from BDO. The reference to settlement strategy on two fronts was to finally resolve the corporate and personal taxation matters with CRA and to engage BDO in discussion to pay compensation for my losses attributable to the failed departure strategy, including my inevitable liability to pay CRA taxes assessed against me.

SWORN BEFORE ME at the District of)
West Vancouver, in the Province of)
British Columbia, this 3rd day of July)
2012.)

)
)

Name: VINCE ALDRIDGE
A Commissioner for Taking Affidavits
In British Columbia



GLENN WALSH

G:\FILES\WALSH.6\PLEADINGS\Affidavit Glenn Walsh #1 June 28, 2012.doc

VINCE ALDRIDGE
Barrister & Solicitor
300 - 1497 MARINE DRIVE
WEST VANCOUVER, BC V7T 1B8
TELEPHONE: 604-925-0672
FACSIMILE: 604-525-8984

17
Aug. 1998

This is Exhibit #1 "referred to
in the Affidavit of GLENN
WALSH sworn before
this 3 day of JULY 20 12

A Commissioner for Taking Affidavits
for British Columbia

Contd - scuse -

- Schroeder - ok

- try for confidentially agreement

- diaries - sept '92 - July '95

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- JAS / MKE - Col. g - or Vane

+ Sue - Kiakung -

+ CLAWK 880 - 6105 OR 443-3507 - JH

- Bob NAWAK - pres Barry Greenwood

Quinton Hillary

Pd. Clagitt -

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Court

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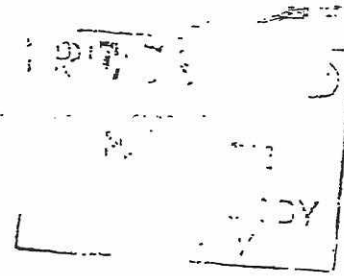
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JAS - 670 - After noon - ask Before back of 98

- story in for Nov of Jan ?

Say Dec 29 - end Jan ?



BDO Dunwoody LLP
1500, 800 - 6 Ave. SW
Calgary, AB T2P 3G3
Attention: Mr. Jas Butalia, CA

Your file / Votre référence

Our file / Notre référence

R. Grewal
Phone: (250) 492-9440
Fax: (250) 492-9447

May 6, 2002

JUN 14 2002

Dear Mr. Butalia:

Re: Glenn H. Walsh - 1998 Assessment of Taxes

We are still reviewing Mr. Walsh's 1998 assessment of taxes and ask that he make the following available to us:

- 1) All books and records (including source documents) with respect to the money lending business (as reported in the 1998 T-1 tax return) in order to allow us to review the results of this operation.
- 2) The sales agreements for the disposition of shares of Conex Services Inc. and Holigresus Enterprises in 1998.
- 3) Documentary evidence to support the adjusted cost base of the shares of Holigresus Enterprises disposed in 1998.
- 4) Any sales agreements, calculations and/or documentary evidence to support the reported proceeds and the adjusted cost base of the shares of Falcon Enterprises Inc. in 1998.

We have reviewed Mr. Walsh's deduction for carrying charges claimed by him in the 1998 taxation year. It is evident to us that the interest expense claim of \$47,499,148.21 included in

This is Exhibit " 2 "referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY, 2002.

A Commissioner for Taking Affidavits
for British Columbia

Telephone: (250) 492-9340
Fax: (250) 492-9447
Address: 277 Winnipeg Street
Penticton, BC V2A 1N6

1282

the carrying charges represents proceeds of a bridge loan that was used to pay interest to December 31, 1998 on a loan of US\$ 694,852,318 borrowed from the Canadian Imperial Bank of Commerce ("CIBC") at 8.74%. We propose to disallow the interest expense under the provisions of paragraphs 18(1)(a), 18(1)(h) and also 20(1)(c) of the Income Tax Act. It is also our position that the General Anti Avoidance Rule of section 245 applies to deny this interest expense claim. A brief discussion on the application of these provisions is noted below:

Application of paragraphs 18(1)(a) and 18(1)(h)

The only purpose of the \$694,852,318 loan was to create an interest expense for Mr. Walsh in the 1998 calendar year so as to offset the income that he had realized and generated from both the commodity trading venture and an employee profit sharing plan set up for his benefit. These loan proceeds show as having been invested in shares of Falcon Enterprises Inc. ("Falcon"), which company then invested the funds into preferred shares of Phoenix Corporation ("Phoenix") who, in turn, invested the funds with Canadian Imperial Holdings Inc. ("CIHI") through a promissory note that generated 8.02% interest. We are of the opinion that this entire arrangement of financing and investing was not profitable from its inception. For that reason, the CIBC required Mr. Walsh to make a collateral deposit to cover the shortfall. Accordingly, the interest expense was not incurred for the purpose of gaining or producing income from a business or property and therefore, is not deductible under paragraph 18(1)(a). Also, the interest is considered to be a "personal and living expenses" of Mr. Walsh, as defined under subsection 248(1) as there was no reasonable expectation of profit from the financing, therefore, not allowable under paragraph 18(1)(h).

Application of paragraph 20(1)(c)

The financing scheme (implemented through the imposition of Falcon and Phoenix) effectively converted the interest earned on the CIHI note into dividends and/or capital gains. It was not profitable from the outset and had no real business purpose other than the avoidance of liability of income taxes. It is our view that the wording "used for the purpose of earning income from a business or property" in paragraph 20(1)(c) is not intended to include the implementation of such schemes to avoid the liability for income taxes. Accordingly, the deduction for interest expense as claimed under this paragraph, is not allowable.

Application of General Anti-Avoidance Rule, section 245

It is our position that the financing arrangement and the investment of the loan proceeds were avoidance transactions under the provisions of subsection 245(3) as they were not undertaken primarily for bona fide purposes other than to obtain the tax benefit¹. Accordingly, we propose to deny the interest expense deduction under subsection 245(2) of the Income Tax Act.

¹ As defined under subsection 245(1).

Please take note that, as we are still in the process of obtaining additional information, the above position is not necessarily set in stone; depending on the information received, we may amend or revise the assessing position we have taken in this letter. Also, depending on our review of the requested information (item 1 to 4 above), we may need to propose additional adjustments. However, we do face a statute-barred timeframe and, if necessary, we would need to reassess prior to that deadline in order to protect the Minister's position in these matters. The above describes our position at this time given our understanding of the facts.

A written representation is requested within 30 days. If you have any question about the foregoing, please feel free to contact me at the telephone number noted above.

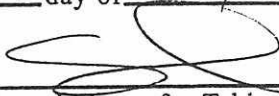
Yours truly,



Raj Grewal
Verification and Enforcement
Canada Customs and Revenue Agency

cc: Mr. Glenn H. Walsh

This is Exhibit " 3 "referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY, 20 12



A Commissioner for Taking Affidavits
for British Columbia



Canada Customs
and Revenue Agency

Agence des douanes
et du revenu du Canada

BDO Dunwoody LLP
1500, 800 – 6 Ave. SW
Calgary, AB T2P 3G3
Attention: Mr. Jas Butalia, CA

Your file / Votre référence

Our file / Notre référence

Raj Grewal
(250) 492-9440

July 8, 2002

Val Burgart
(250) 492-9348

Dear Sir

Re: Glenn H. Walsh – 1998 Assessment of Taxes

We have reviewed the contents of your letter of June 11, 2002 and wish to provide you with the following comments:

1 Bad debts on money lending business

We assume that your comment that there are no books or records available with regard to the money lending business means that there are no formal books of account. Certainly, though, there are other records of the transactions. We ask that you provide copies of all documents, correspondence, memos, and agreements that Mr. Walsh has related to the granting of, holding of and loss related to these loans. We also have to have the information and documentation noted in Addendum – 1 to determine the tax consequences of the transactions in the context of paragraph 20(1)(p). The requested information is pertinent to a finding of whether paragraph 20(1)(p) of the Income Tax Act applies to Mr. Walsh's particular situation (i.e., whether he was ordinarily in the business of lending money and whether the loans at issue had become uncollectible in the year, and whether the loans were made in the ordinary course of his business of the lending of money). Feel free to provide us with a submission providing any other facts to support Mr. Walsh's claim that such a loan qualifies as a deduction under the Act.

Telephone: (250) 492-9348
Fax: (250) 492-9447
Address: 277 Winnipeg Street
Penticton, BC V2A 1N6

1348

Please be advised that we consider that Mr. Walsh has not provided sufficient evidence to support his claim with regard to the two smaller loans of \$60,000 US and \$70,000 US. The data entry for outgoing payments and internal memo prepared by Tercon Contractors Ltd. is not sufficient for us to consider that the amount were in fact even loaned to third parties. Please provide all the relevant information as noted in Addendum - 1 for these two loans as well including formal loan agreement, if any existed setting out the name and address of the borrower, interest rate and the terms of repayment/s.

Included as
w/101-
→ w/101-
in Cash I
enclosed

In addition to the above, we have come across certain wire transfers (listed below) in the bank account of Tercon Contractors Ltd. (GL a/c # 110). In order to resolve the issue of money lending business, we would like to know the complete picture, as to where the transferred funds were deposited, what was done with them, the quantum of income - if any earned from such wire transfers and where deposited. We also request that all original documents (originated in Canada and abroad) pertaining to the wire transfers and the investment thereof be made available for our examination.

<u>Amount</u>	<u>Remarks</u>
\$9,000,000.00	GJApr15/98; funds wire transferred out on March 3/98; debit was to A/Receivable Misc; a/c # 134
<i>Bank of Tercon</i> 9,829,669.50	GJMay07/98; funds transferred in on April 1/98; credited to A/Receivable Misc. a/c # 134
<i>CIBC</i> 5,000,160.00	GJJul09/98; funds wire transferred out on June 4/98.
2,000,160.00	GJApr15/98; funds wire transferred out on March 3/98; debit was to A/Receivable Misc. a/c # 134.

2 Valuation of shares

We are unable to complete our review about the fair market value of shares of Conex Services Inc. and Holigresus Enterprises. Accordingly, we are not in a position to accept or reject your representation on these transactions at this stage.

3 ACB of shares

We have accepted your representation for the adjusted cost base of the shares of Holigresus Enterprises.

4 Shares of Falcon Enterprises Inc.

As noted in our previous letter, it is our position that the only purpose of borrowing US\$694,852,318 from the Canadian Imperial Bank of Commerce ("the CIBC") was to create interest expense to offset income Mr. Walsh had realized from employee profit sharing plans and from the commodity-trading venture. He acquired the shares of Falcon Enterprises Inc. ("Falcon") in the series of transactions to create carrying charges. His investment in Falcon was not profitable from the very beginning and for that reason we wish to refrain from contesting the valuation and the deemed disposition of the shares of Falcon. However, in the event, the Canada Customs and Revenue Agency is not successful in disallowing the claimed carrying charges of \$47,499,148.21, we would take the position that the gain in the value of Falcon shares be equivalent to the accrued interest earned by Phoenix on the CIHI note from June 15, 1998 to December 31, 1998.

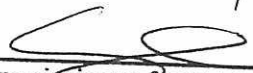
A reply with in 30 days is requested. As statue barred date is fast approaching, your early representation would be appreciated.

Yours truly,

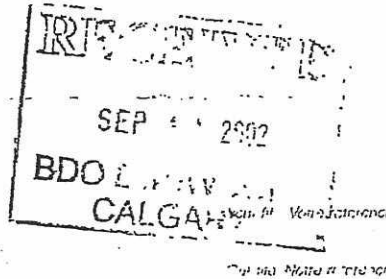
Raj Grewal, Tax Avoidance Section
Val Burgart, International Audit Section
Verification and Enforcement Division

This is Exhibit " 4 "referred to
in the Affidavit of GLENN
WALSH sworn before me
this 9 day of JULY, 20 12


A Commissioner for Taking Affidavits
for British Columbia



Canada Customs and Revenue Agency Agence des douanes et du revenu du Canada



BDO Dunwoody LLP
1500, 800 - 6 Ave. SW
Calgary, AB T2P 3G3

R. Grewal
(250) 492-9440

Attention: Mr. Jas Butalia, CA

September 5, 2002

Dear Mr. Butalia:

Re: GLENN H. WALSH - 1998 Tax Return

Thank you for your letter of August 2, 2002. We have reviewed the contents thereof and provide you with the following comments:

1 Bad debts on money lending business

Exhibit 1:

You have not provided sufficient details in your letter as to what connection, if any, the enclosed documents make to the loans at issue; in particular, a fax from your office to Brian MacLean dealing with the liens on a property in Woodstock and a preliminary appraisal report. With respect to the two smaller amounts of US\$60,000 and US\$70,000, we have not received any loan documentation outlining the interest rate, terms of repayment, the maturity date and details of security taken etc. Accordingly, we are not in a position to accept these two amounts as loans.

Given the magnitude of the advances, the nature of transfer (wire transfer instead of bank draft) and the absence of any security obtained, we are still not convinced that the funds in question were in fact transferred to Mr. Braich. As the wire transfers have left no verifiable trail of the recipient of the funds, we are unable to vouch and thus accept the validity of the loans. We need documentary evidence from the transferring bank about the recipient of the funds i.e. name and address of the bank where the funds were transferred to, and the name/s and address/es of the account holder/s receiving the funds.

Facs: (250) 492-9447

Télécopieur: (250) 492-9447

1339

277 Winnipeg Street
Penticton BC V2A 1N6

277, rue Winnipeg
Penticton CB V2A 1N6

Canada

11

Glenn H. Walsh

We also find the contents of both the promissory notes incomplete and/or incorrect. The promissory note dated March 18, 1998 does not contain the amount of interest "as agreed"; the space between the brackets was left blank. The second promissory note dated March 3, 1998 was payable on March 23, 1998 but the stated amount of interest on the principal does not correspond with the interest rate of prime plus 2% for the 20 days.

Exhibit II:

The information relating to Stellar Group of Companies and Plama Oil Refinery is dated May 1998 and is subsequent to the dates of promissory notes. The documents you had enclosed refer to various investments. We are unable to establish any definitive link of the advanced funds to any particular investments mentioned in the documents. The funds were said to have been advanced to Mr. Braich whereas the documents refer to investment opportunities by Braich Capital Corporation. We still do not have complete details on the advances. We do note that Braich Capital Corporation offered an interest rate of 17.25% whereas Mr. Walsh opted for prime plus 2%. There are many indications in the documents provided to us that Mr. Walsh was to participate in the deals or to be a part owner of the projects. You have stressed this point as well on page one of your letter. However, documentary evidence in this regard has not been provided. We request that all such details must be provided so that we could make a well-informed decision on this issue.

Exhibit III:

You have not explained in your letter as to what connection, if any, T&G Retirements Advisors Ltd. had with Mr. Walsh. Accordingly, we are not in a position to accept such documentation as evidence of collection efforts by Mr. Walsh.

Item 5 of your Memorandum dated July 12, 1999 addressed and faxed to McLean Saba Armstrong refers to Mr. Braich providing security on his property in upstate New York. You have not provided us any details and documentation of the mentioned security and what action/s were taken by Mr. Walsh to realize on the security. Under item 10, we note that Mr. Braich was willing to pay the full amount along with the interest charges in the later part of December of 1998. Furthermore, in items 2 and 3 of your Memorandum dated January 25, 1999 that documents your conversation with Mr. Walsh, it is noted that Mr. Braich, in his conversation of January 21, 1999, was willing to return the capital with the appropriate return on the use of funds and Mr. Walsh could walk away from the deal. We also note in the memo that you had recommended to Mr. Walsh to call for the funds to be returned.

Glenn H. Walsh

Keeping in mind Mr. Braich's willingness to repay the capital along with the interest thereon in the early part of 1999 and that no formal demand was made on the promissory notes until April 26, 1999, it is our view that Mr. Walsh has not established that the debts in question were even doubtful in the 1998 taxation year. In addition, it is also our view that Mr. Walsh's ordinary business did not include the business of lending of money. We consider that the advances at issue (if in fact were made and not returned in any way, directly or indirectly to him or to anyone else with whom he does not deal at an arm's length) were investments made by him to earn interest and to participate in the upside of the deals. They were not loans made in the ordinary course of business of lending of money. The information provided to us in the Addendum - 1 clearly indicates that Mr. Walsh was not in the business of lending of money. His conduct lacked the characteristics of money lending business and his venture lacked frequency and volume of transactions of lending money to arm's length parties. His advances to the various companies in which he had direct or indirect interest (Conex Services Inc. and other companies owned/controlled by it) are considered as his investments and such advances could not be accepted as made in the business of lending money. ||

In the absence of complete legal correspondence on the collection efforts to date including all the court actions taken, judgments obtained and the securities taken, we are not in a position to accept that the advances to Mr. Braich (if proven to have been made) have in fact become non collectible at this stage. It is reasonable for us to assume that Mr. Walsh, through his various corporations, has extensive experience in dealing with such adverse situations and with the professional advice available to him, he would not let such a large sum of funds disappear without obtaining something comparable in return.

2 Application of GAAR

Representations made by Mr. Nitikman have already been provided to our headquarters and identified to the GAAR committee. Our headquarters has recommended no change to the application of GAAR.

3 Other

We also wish to make it clear that we are still in the process of obtaining further information to verify Mr. Walsh's carrying charges. Depending on the information received, we may revise and/or amend the assessing position/s we have already taken.

Glenn H. Walsh

We note that the first payment of interest on the US\$694,852,318 arranged loan was payable on December 31, 1998. Mr. Walsh ceased to be resident of Canada on December 29, 1998. As the interest at issue was neither paid nor payable by December 29, 1998, it is our opinion that he is not entitled to the deduction under paragraph 20(1)(c).

We also view the entire loan as circular arrangement, achieved with the creation of certain documents with pre-set direction by the parties involved to direct the funds by one party to the next. The amount for the said loan never left the bank and the bank never relinquished the control of the funds. Upon the maturity of the promissory notes, again with pre-set directions to repay by one party to the other resulted in no movement of funds outside the bank. The parties that were dealing at an arm's length with the bank obtained neither control nor possession of the funds, even for one moment. We are also aware that the entire arrangement was undertaken to create a tax deduction, had no bona fide business purpose and was not profitable from the very beginning. The entire set up could be readily viewed as a sham when considered in light of comments made about Moloney v. The Queen, 92 D.T.C. 6570, cited in the recent Supreme Court of Canada case of Walls v. Canada.

As the 1998 tax return is becoming statute barred soon, we are proceeding to process the file. We wish to thank you for your patience and cooperation during the audit process.

Yours truly,



Raj Grewal, Tax Avoidance Section
Verification and Enforcement
Canada Customs and Revenue Agency

cc: Mr. Glenn H. Walsh


Mem: Oct. 15
nr

September 17, 2002

This is Exhibit " 5 " referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY, 20 12

PERSONAL & CONFIDENTIAL

Mr. Glenn H. Walsh
10/3 Cathedral Street
St. Paul's Bay
Malta SPB 09


A Commissioner for Taking Affidavits
for British Columbia

Dear Glenn:

Re: 1998 Tax Return

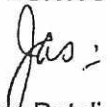
I am receipt of a letter from Mr. Raj Grewal in respect of your 1998 tax return. It is evident to me that the submissions that are being made to Mr. Grewal are not being reviewed by him on an independent basis. As evidenced by the letter that you should have received dated September 5, 2002, the 1998 tax return will be reassessed by him and should you happen to receive the Notice of Reassessment, please forward it to me so that we can then instruct the lawyers to prepare the necessary Notices of Objection in respect of the Reassessment.

Should you require further clarification of this letter, please contact me.

Regards.

Yours truly,

BDO DUNWOODY LLP

Per: 
Jas Butalia, B.Sc., CA, TEP

\plf

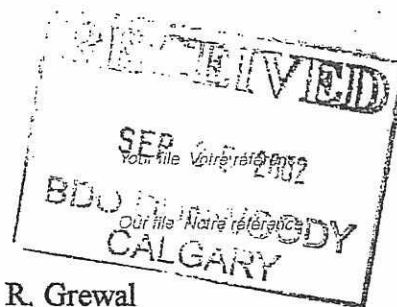


Canada Customs and Revenue Agency

Agence des douanes et du revenu du Canada

BDO Dunwoody LLP
1500, 800 - 6 Ave. SW
Calgary, AB T2P 3G3

Attention: Mr. Jas Butalia, CA



R. Grewal
(250) 492-9440

September 20, 2002

Dear Mr. Butalia:

Re: GLENN H. WALSH - 1998 Tax Return

This is further to item 4 of our letter dated July 8, 2002. We wish to advise you that in order to protect the Minister's position, we will increase the proceeds of disposition of the shares of Falcon Enterprises Inc. from \$10,000,000 to the equivalent of accrued interest earned by Phoenix Corporation on the CIHI Note from June 15, 1998 to December 29, 1998; please refer to Schedule - 1 attached for details.

We are also cognizant of the fact that by interposing Falcon and Phoenix in his tax planning, Mr. Walsh was able to convert the nature of interest income from the CIHI Note into capital gain.

Reassessment is currently being processed.

Yours truly,

Raj Grewal, Tax Avoidance Section
Verification and Enforcement
Canada Customs and Revenue Agency

cc: Mr. Glenn H. Walsh

This is Exhibit " 6 " referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY, 2012

A Commissioner for Taking Affidavits
for British Columbia

Facs: (250) 492-9447

Télécopieur: (250) 492-9447

1337

277 Winnipeg Street
Penticton BC V2A 1N6

277, rue Winnipeg
Penticton CB V2A 1N6



GLENN H. WALSH

Schedule - 1

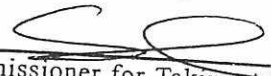
CALCULATION OF INTEREST ON THE CIHI NOTE AND
INCREASE IN TAXABLE CAPITAL GAIN ON SHARES
OF FALCON ENTERPRISES INC.

<u>Period</u>	<u>No. of Days</u> (A)	<u>Principal</u> (B)	<u>Interest Rate</u> (C)	<u>Interest Amount</u> $(A) \times (B) \times (C)$ 360 Days	<u>Principal + Interest</u>
<u>1998 Year</u>					
June 15 to July 15	30	\$ 694,852,318	8.02%	\$ 4,643,930	\$ 699,496,248
July 16 to August 15	31	699,496,248	8.02%	4,830,799	704,327,046
August 16 to Sept. 15	31	704,327,046	8.02%	4,864,161	709,191,207
Sept. 16 to Oct. 15	30	709,191,207	8.02%	4,739,761	713,930,969
Oct. 16 to Nov. 15	31	713,930,969	8.02%	4,930,487	718,861,455
Nov. 15 to Dec. 15	30	718,861,455	8.02%	4,804,391	723,665,846
Dec. 16 to Dec. 29	14	723,665,846	8.02%	2,257,033	725,922,879
Total Interest earned on the CIHI Note:				<u>\$ 31,070,561</u>	
Converted to Cdn dollar @ 1.549				<u>\$ 48,128,299</u>	

The interest receivable earned on the CIHI Note increased the value of preferred shares of Phoenix Corporation, that in turn increased the value of shares of Falcon Enterprises Inc.

Increase in the value of Falcon shares - as calculated above	48,128,299
Less: Adjusted cost base - as previously reported	8,653
Revised capital gain	<u>48,119,646</u>
Capital gain as previously reported	9,991,347
Increase in capital gain (A)	<u>38,128,299</u>
Increase in taxable capital gain: 75% of (A)	<u>\$ 28,596,225</u>

This is Exhibit " 7 "referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY, 2012


A Commissioner for Taking Affidavits
for British Columbia



BDO Dunwoody LLP
Chartered Accountants
and Consultants

1500, 800 - 6 Avenue S.W.
Calgary Alberta T2P 3G3
Telephone: (403) 266-5608
Telefax: (403) 233-7833

M E M O R A N D U M

DATE: SEPTEMBER 23, 2002
TO: TERCON CONTRACTORS LTD.
ATTENTION: MR. DAVE HORNE, CA
FROM: JAS BUTALIA, BDO DUNWOODY, CALGARY, ALBERTA
RE: TAX SHELTER INTENDED TO BE CREATED BY 1998 TRANSACTIONS

As requested by you, this memorandum sets out the additional income and deductions that were created in September 1998 for Tercon Contractors Ltd. ("Contractors").

The sale of equipment from Contractors to Tercon Services Ltd. ("Services") at \$17,054,244 created the step-up in depreciable assets as follows:

• Recapture triggered on the sale	\$4,313,737
• Capital gain triggered on the sale	<u>814,555</u>
• Total bump in depreciable assets	\$5,128,292
• Income from operations	<u>19,391,626</u>
• Total income in Contractors before the EPSP	24,519,918
• Less: EPSP created to shelter the aforementioned income	<u>24,540,000</u>
• Allowable loss left in Contractors in 1998	<u>\$ 20,082</u>

The result of the gain on the sale of the equipment and the creation of the EPSP was to be as follows:

• additional capital cost allowance on the bumped up value of the equipment - CCA being on a declining balance, but for discussion purposes, being 30% of \$5,128,292, approximately	\$1,500,000
• interest on the shareholder's loan created from the EPSP	
• - 10% of 24,540,000	<u>2,454,000</u>
• Total additional deductions to be created in the Tercon Group	<u>\$3,954,000</u>

00000108

The creation of the interest expense on the shareholder's loan would result in withholding taxes. The withholding tax between Canada and Malta is at the rate of 15% and therefore, the additional interest expense would create a tax reduction as follows:

• top marginal tax rates in BC for individuals at that time	54%
• Less: withholding tax on interest	<u>15%</u>
• Net saving in tax	39%
Interest of	<u>2,454,000</u>
Anticipated annual savings at that time, approximately	957,000
Additional tax deferral on capital cost allowance, which would be reflected through the marginal personal tax rate as it would allow a reduced compensation to the owners - 54% x \$1,500,000 is approximately	<u>810,000</u>
Total anticipated annual tax and deferral	<u>\$1,767,000</u>

At the time that the Strategy was put in place, consideration was also being given to the possibility of moving the equipment out of Canada and into Chile. In early 1998 and the early part of the summer of 1998, discussions were ongoing with respect to a contract or contracts outside of Canada and therefore, the thought was that the step-up of the equipment would allow the equipment to be removed from Canada on a tax-sheltered basis through the CIBC transaction. It was being considered that the equipment could then be rented back to Canada from, say Malta, which then would result in further annual tax savings in Canada. The tax saving would result from the application of the withholding tax of 25% on the lease payments for the equipment, compared to the normal tax rate of 54% at that time. Thus, it was anticipated that the step-up in the equipment would result in an outright tax saving of approximately 29% annually, rather than a deferral resulting from the capital cost allowance.

When the CCRA reassessed the 1998 tax year, we asked them to reverse the step-up on the equipment. Thus far, they have not accepted the reversal. Should the reassessment be successfully appealed, the only tax shelter that will be created from the CIBC transaction will be the EPSP amount which is now sitting as a payable to Apex. The interest paid on the Apex note will be a means of extracting profits from Canada at the reduced tax rate of 15% that would apply under the Malta Treaty.

I hope that this is the information that you required from me. However, should you require further clarification of this memorandum, please contact me.

Regards,

BDO Dunwoody LLP

Butalia

Per:
Jas Butalia, B.Sc., CA, TEP

\plf

Butalia, Jas

Glenn Walsh Dep File
(?)

From: Butalia, Jas
Sent: Thursday, September 26, 2002 10:49 AM
To: 'Dave Horne'
Subject: RE: tax shelter

It is correct that there was in fact \$50 million in deductions that was created. The \$50 million at the personal level was to cover off the following incomes:

- Class C shares of Conex from Jean Walsh \$1,890,000
- Commodity Tax from prior years 5,153,000
- Appreciation in the investment by the time of departure-CIBC taxable portion 7,500,000
- Total before EPSP \$14,543,000
- EPSP 29,853,000

- Total income that was sheltered 44,396,000
- Loss Carry Forward, see page of 1998 Tax return for Glenn 5,935,000
- Total deductions \$50,331,000

However, as can be seen above, the deductions also sheltered the Commodity shelter & Jean's capital gains, plus, there was an appreciation in the investment that was made from the loan from CIBC. We have a loss carried forward, which will be available at the personal level, if we win the Appeals.

I hope this ties down the numbers for Glenn. Please let me know if you need clarification of this explanation.

Regards.

BDO Dunwoody LLP,

By: Jas Butalia, B.Sc, CA, TEP.

Direct: 403-531-0535
Main: 403-266-5608
Fax: 403-233-7833
Mobile: 403-874-6833
E-mail: jbutalia@bdo.ca

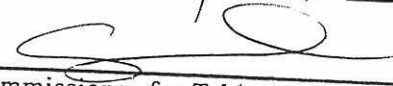
-----Original Message-----

From: Dave Horne [mailto:Dave@tercon.bc.ca]
Sent: Thursday, September 26, 2002 8:31 AM
To: Jas Butalia
Subject: tax shelter


I have reviewed your memorandum of Sept. 23/02 and I will go over it with Glenn when he returns in a couple of weeks.

For some reason Glenn believes that there should be \$50 million of income sheltered. He keeps referring to a large payment (millions of \$) to CIBC that was to create further tax deductions. Was this to do with his personal tax? Could you provide him with a similar memo on how this worked?

I suppose if we took the bump in assets plus the EPSP plus future interest payments on the loan created from the EPSP eventually we would get to the \$50 million.

This is Exhibit " 8 "referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY, 2012

A Commissioner for Taking Affidavits
for British Columbia

This is Exhibit " 9 "referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY, 2012


A Commissioner for Taking Affidavits
for British Columbia

memo

Terec
CONTRACTORS LTD

to FRS

from Glenn Walsh

29 Oct 02

I'm still totally engaged with the overall tax issue but bear in mind about, and your outline of 23 Sept 02. All of the Holburn - Pottam view seen there is rather preliminary to me, but it appears that the expected result is a shelter of some \$24 million. The issue of course is that there was one entity with large tax liabilities post and pre the future to be sheltered ("teen"). I know that strategy you set up includes a range of the Pottam plus one personally, but the original issue was the tax liability to be eliminated for the teen/long group.

When we embarked on this program, we had income of some \$33 to \$35M to be covered, plus some future income,

1012 VICTORIA STREET
KAMLOO PS, B.C. V2C 2C4

phone: (604) 372-0922
fax: (604) 372-1555



00002812

Memo

Terec
CONTRACTORS LTD

to

from Glenn Walsh

(I hope for) that raised the total to \$50 million. In our discussion on the matter, I felt that protection of a further \$15M or so would be suitable for enough in the future. We agreed that 50% would be the amount to shelter.

My question is, if we shelter \$50M of income, at 55% tax rate, how do we realize the \$27M of tax saving? I was aware of taxes of some 4.2% to be paid in walk on earnings from offshore, but where is the said \$27M of savings? We seem to be paying out significant taxes not to mention advances to allow us to pursue our case, plus accounting and legal fees etc, but where does the tax saving (the reason for it all) show up?

1012 VICTORIA STREET
KAMLOO PS, B.C. V2C 2C4

phone: (604) 372-0922
fax: (604) 372-1555



(2)

Memo

Fercom
CONTRACTORS LTD

to _____

3

from Glenn Walsh

I realize my approach to cost
has been a very simplistic view is
rather simplistic, but surely the
strategy was to result in very
significant savings. Where have they
and will they show up?

Thanks
Glenn

- P.S. - Will be in Baltimore for the
month of November, but will get
members to your when I can be reached.

- J.

1012 MICHIGAN STREET
KNOXVILLE, TN 37926

Phone: (604) 372-0922
Fax: (604) 372-1555

00002813

Subject: Forward to Glenn Walsh

Date: Fri, 22 Nov 2002 14:57:57 -0500

From: "Butalia, Jas" <jbutalia@bdo.ca>

To: "Dave@tercon.bc.ca" <Dave@tercon.bc.ca>

BDO Dunwoody LLP
Chartered Accountants
and Consultants 1500, 800 - 6 Avenue S.W.
Calgary Alberta T2P 3G3
Telephone: (403) 266-5608
Telefax: (403) 233-7833

Further to Glenn's memo to me of October 29, 2002, I have the following comments:

1. the loss carry forward that shows up on Page 2 of Glenn's personal tax return for 1998 is approximately \$5,935,000. This loss is available to be carried forward and applied to Glenn's income that he would earn from Tercon as wages or as management fees when one decides to pay him the management fees personally as opposed to paying it to Malta; and

2. at the time of departure, the shares of Falcon had to be valued. The CIBC could not provide us with a valuation of the shares at the time of filing the tax returns and therefore, arbitrarily, the value of the shares was shown by us to have appreciated by \$10,000,000. Thus, if the share valuation is eliminated upon the eventual determination of the matters related to the departure tax strategy, the income for Glenn will be reduced by 75% of the capital gain of \$10,000,000, i.e. by \$7,500,000.

If you add the two items noted, i.e. the loss carry forward of \$5,935,000 and the elimination of the taxable portion of the capital gain for the shares of Falcon, Glenn will have a loss carried forward on his personal tax return of \$13,435,000 in total. This loss carry forward would then be available to him to apply against wages and/or management fees.

Hopefully, this will explain to Glenn that, subject to the finalization of the departure tax strategy, there is a potential for a cushion against taxable income in the future years of approximately \$13,500,000. This is not quite the \$15,000,000 that we set out to achieve; however, the final numbers worked out to \$13,500,000, subject to the issues related to the success of the challenge of the Reassessments by the CCRA.

in addition to \$3-5M. elsewhere?

I hope that this simplifies the explanation that I previously provided to you and to Glenn on October 17, 2002. If not, please let me know and I shall try again.

Regards,

BDO Dunwoody LLP

<<...OLE_Obj...>>

Per:

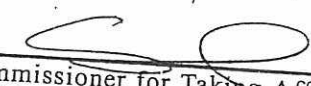
Jas Butalia, B.Sc., CA, TEP

Direct Telephone: (403) 531-0535


Fax: (403) 233-7833

Email: jbutalia@bdo.ca

This is Exhibit " 10 " referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY, 2012


A Commissioner for Taking Affidavits
for British Columbia

This is Exhibit " 11 "referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY, 20 12


A Commissioner for Taking Affidavits
for British Columbia

JOEL A. NITIKMAN
Direct Line: (604) 443-7115
Internet: Joel.Nitikman@FraserMilner.com

January 6, 2003

VIA COURIER

CCRA
Appeals Branch
4th Floor, 800 Burrard Street
Vancouver, BC

Attention: Chief of Appeals

Dear Sirs:

Notice of Objection
1998 and 1999 Taxation Years
Glenn Walsh
703 719 112

1.0 Name and Address of Taxpayer
1.1 Glenn Walsh
c/o 1500-1040 West Georgia Street
Vancouver, BC V6E 4H8

2.0 Details of Notification that No Tax is Payable and Notice of Reassessment
2.1 Notices of Reassessment for the 1998 and 1999 taxation years dated October 10,
2002, Serial Numbers 2273649 and 2273650, issued by the International Tax Services Office,
Ottawa, Ontario (copies enclosed).

3.0 Account Number
3.1 The Taxpayer's SIN is 703 719 112.

4.0 Statement of Facts

(a) the Bad Debt Deduction

- 4.1 Until December 29, 1998 the Taxpayer was a resident of Canada.
- 4.2 While he was a resident of Canada the Taxpayer was engaged in a number of different activities for the purpose of earning income therefrom.
- 4.3 On or around March 3, 1998 the Taxpayer lent to Mr. Erwin Braich ("Braich") of Mission BC \$1 million US (\$Cdn. \$1,420,900) (the "First Loan"). The First Loan was repayable on March 23, 1998 with \$40,000 US interest and interest at TD Bank Prime + 2% on default of repayment. The First Loan was evidenced by a promissory note dated March 3, 1998 executed by Braich. As security for the First Loan (and the subsequent Loans), Braich agreed to assign to the Taxpayer an interest in Braich's father's Estate; however no such assignment was made.
- 4.4 On or around March 18, 1998 the Taxpayer lent Braich 500,000 British Sterling Pounds (\$Cdn. 1,188,861) (the "Second Loan"). The Second Loan was payable on demand with interest at TD Bank Prime + 2% on default of repayment. The Second Loan was evidenced by a promissory note dated March 18, 1998 executed by Braich.
- 4.5 On or about August 28, 1998 the Taxpayer lent Braich two loans (collectively the "Third Loan") totaling \$130,000 US (\$Cdn. \$204,288).
- 4.6 Braich did not repay the First Loan on March 23, 1998 or at any time.
- 4.7 Braich, through his lawyers, acknowledged his debts to the Taxpayer by letter to the Taxpayer's lawyer dated April 7, 1999.
- 4.8 By letter dated April 26, 1999 from the Taxpayer's lawyer Brian McLean to Braich, the Taxpayer demanded repayment of the Second and Third Loans.
- 4.9 Braich did not repay the Second or Third Loan as demanded in the April 26, 1999 letter by the end of 1999.
- 4.10 On June 28, 1999 the Taxpayer filed a Petition in the BC Supreme Court to have Braich declared bankrupt. In that Petition the Taxpayer listed the First, Second and Third Loans as debts owing by Braich to the Taxpayer. The Petition was supported by the Affidavit of Janet

Bennett dated June 25, 1999, the agent of the Taxpayer, which Affidavit provided evidence for the exist and quantum of the First, Second and Third Loans.

4.11 On October 1, 1999 the BC Supreme Court ordered that Braich be declared bankrupt.

4.12 At the first meeting of Braich's creditors pursuant to the Bankruptcy Act Braich's debts to the Taxpayer were listed as \$3,056,605.76.

4.13 In filing his return for his 1998 taxation year the Taxpayer deducted as a bad debt from a money lending business the total of \$Cdn. \$1,420,900 + \$Cdn. 1,188,861 + \$Cdn. \$204,288 (\$Cdn. 2,814,049) plus interest on the various loans of \$Cdn. 210,601 (total \$3,024,650).

4.14 By Notice of Reassessment dated October 10, 2002 the Minister of National Revenue denied the bad debt deduction of \$3,024,650.

(b) the Interest Deductions

4.15 In or about June 1998 the Taxpayer borrowed \$694,852,318 US (\$Cdn. 1,019,000,924.34) from the Canadian Imperial Bank of Commerce in Canada (the "CIBC Loan"). The CIBC Loan was evidenced by a Promissory Note executed by the Taxpayer dated June 12, 1998.

4.16 The interest payable on the CIBC Loan was payable on December 31, 1998 at 8.74%.

4.17 The Taxpayer used the proceeds of the CIBC Loan to make an interest-bearing loan (the "Falcon Shareholders Loan") to Falcon Enterprises Ltd. ("Falcon"), a Cayman Islands corporation incorporated on June 9, 1998 of which the Taxpayer was the sole shareholder. There were no specified terms of repayment for the Falcon Shareholders Loan. The Falcon Shareholder Loan paid interest at 8.74%.

4.18 Falcon used the proceeds of the share investment to acquire preferred shares (the Phoenix Preferred Shares") of its wholly-owned Cayman Islands subsidiary corporation Phoenix Corporation ("Phoenix"), which was incorporated on June 9, 1998. The Phoenix Preferred Shares were redeemable and retractable for \$694,852,318 US, were entitled to non-cumulative

dividends at the discretion of the directors and were non-voting.

4.19 Phoenix used the proceeds of the preferred share investment to lend money to Canadian Imperial Holdings Corporation, a US corporation (the "CIHI Investment"). The CIHI Investment was evidenced by a promissory note dated June 12, 1998.

4.20 The CIHI Investment paid interest at the greater of 8.02% and the London InterBank Offered Rate ("LIBOR") for each day the CIHI Investment was outstanding.

4.21 The principal and interest owing by CIHI on the CIHI Investment was repayable to Phoenix on or about January 15, 1999.

4.22 In his return of income for his 1998 taxation year the Taxpayer deducted the interest payable by him for 1998 on the CIBC Loan, pursuant to paragraph 20(1)(c) of the Act.

4.23 By the 1998 Reassessment the Minister disallowed the interest deduction, on the assumptions that (a) the Taxpayer had not met the purpose test in paragraph 20(1)(c), (b) the series of transactions was a sham and (c) it would be reasonable to do so under subsection 245(2) of the Act.

4.24 In addition, by the 1998 Reassessment the Minister increased the taxable capital gain realized by the Taxpayer on the deemed disposition of his Falcon shares under subsection 128.1(4) of the Income Tax Act (Canada) (the "Act") on the assumption that the fair market value of the Falcon shares owned by the Taxpayer on the date he was deemed to have disposed of them was increased by the amount of interest owing by CIHI to Phoenix on the CIHI Investment as of the date the Taxpayer ceased to be a resident of Canada.

(c) 1999

4.25 By Notice of Reassessment for the Taxpayer's 1999 taxation year the Minister disallowed certain loss carryforwards from 1998 as a result of the 1998 Reassessment.

5.0 Reasons for Objecting to the Reassessments

(a) Bad Debt Deduction

5.1 The Taxpayer says that the First, Second and Third Loans to Braich were made in the course of a money-lending business carried on by him in 1998 and 1998 for purposes of paragraphs 20(1)(l) and (p) of the Income Tax Act (Canada) (the "Act"), or alternatively that the

Taxpayer made those Loans in the course of an adventure in the nature of trade.

5.2 The Taxpayer says that it was clear that the First Loan to Braich would not be repaid as of the end of 1998 or at least doubtful as to whether it would be repaid as of that time and therefore the Taxpayer was correct in claiming a deduction for this amount (plus interest) in his 1998 taxation year.

5.3 The Taxpayer admits that no deduction should have been claimed in his 1998 taxation year for the Second and Third Loans to Braich, as no demand for repayment therefore was made until 1999.

5.4 The Taxpayer says that the Second and Third Loans to Braich were demanded in April 1999, that no payments thereof were made by the end of 1999, that no repayments thereof could be expected at any future time, and that all of the Loans to Braich (plus interest) were bad debts as of the end of the 1999 and therefore a deduction for all of the loans plus interest should have been allowed to the Taxpayer for his 1999 taxation year.

(b) the Interest Deductions

5.5 The CIBC Loan was borrowed by the Taxpayer for the purpose of gaining or producing income in the form of interest from the Falcon Shareholder Loan and dividends from the common shares of Falcon owned by the Taxpayer.

5.6 The Taxpayer had a reasonable expectation of earning dividends from the Falcon shares because the CIHI Investment owned by Phoenix paid a fixed minimum rate of interest, and therefore, regardless of whether the Taxpayer made a net profit on the CIBC Loan, he satisfied the purpose test in paragraph 20(1)(c).

5.7 Having satisfied the purpose test in paragraph 20(1)(c), the borrowing of the CIBC Loan was not a misuse of that provision or an abuse within the meaning of subsection 245(4) of the Act.

5.8 The Taxpayer ceased to reside in Canada for purposes of the Act on December 29, 1998 and interest on the CIBC Note was payable on December 31, 1998. However, under subparagraph 114(1)(c)(i), the interest deduction on the CIBC Loan can reasonably be considered to be applicable to the part of 1998 while the Taxpayer was resident in Canada and is therefore deductible by him in computing his income for 1998 prior to December 29, 1998.

00002267

(c) the Capital Gain

5.9 The Taxpayer's gain resulting from the deemed disposition of his Falcon common shares immediately before his cessation of residence on December 29, 1998 would have been reduced by the amount of interest accruing to Phoenix on the CIHI Investment up to that time, pursuant to paragraph 92(1)(a) of the Act.

(d) 1999

5.10 The loss carryforwards should be allowed to the extent otherwise available taking into account the objections above to the 1998 Reassessment.

Yours truly,
FRASER MILNER CASGRAIN LLP

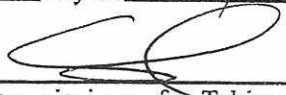
Per:

JAN

cc: Jas Butalia

This is Exhibit " 12 "referred to
in the Affidavit of GLENN

WALSH sworn before me
this 3 day of JULY, 20 12


A Commissioner for Taking Affidavits
for British Columbia

Butalia, Jas

From: Butalia, Jas
Sent: Tuesday, January 14, 2003 6:45 PM
To: 'Joel.Nitikman@fmc-law.com'; 'dave@tercon.bc.ca'
Subject: Re. Glenn Walsh--Notice of Objection-1998 and 1999 taxation years

Just got off the plane from TO & will gather this for you over the next few days, the time to gather being dependent on what I have to do with my desk.

BDO Dunwoody LLP,
Per: Jas Butalia.

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Nitikman, Joel <Joel.Nitikman@fmc-law.com>
To: 'dave@tercon.bc.ca' <dave@tercon.bc.ca>
CC: 'jbutalia@bdo.ca' <jbutalia@bdo.ca>
Sent: Tue Jan 14 15:10:16 2003
Subject: Glenn Walsh--Notice of Objection-1998 and 1999 taxation years

Dave, it was nice to speak with you on the phone earlier today. As we discussed, I met with Glenn for about 1 ½ hours today and went over the Notice of Objection for his 1998 and 1999 taxation years, a copy of which I gave him and a copy of which is enclosed for your review. A number of follow-up points came out of the meeting. These are listed below. I would appreciate it if you and Jas could review this list and give me your best guess for completing the various items. I understand this will only be a rough guess but my experience tells me that having a deadline is better than saying ASAP.

For the Braich Loan

- 1) Review Glenn's notebook that he keeps of various meetings etc and send me copies of any pages mentioning (a) Braich and (b) loans to other people. We should go back to maybe 1993 if his books are available that far back; if not then as far back as they go.
- 2) review all banking records to determine from which account and provide evidence of the transfer of funds from Glenn to Braich for each of the three loans mentioned in the Notice of Objection. I understand the first loan may have come from Tercon to Braich as a repayment of amounts owing by Tercon to Glenn for an ESPS set up by Tercon in Glenn's favour
- 3) review Glenn's past tax returns to see if he ever reported interest from loans to other persons besides Braich.
- 4) determine whether, if the loan to Braich is determined to be a capital loss rather than an income loss, Glenn has any capital gains against which the loss could be deducted for 1998 and 1998.
- 5) review the records for the following companies and determine the details (dates, amounts, terms) of loans made by Glenn to these companies, or any other companies that you may know about: (a) MCON; (b) Tag Construction; (c) Northern Rock Products, (d) Caliber Systems; (e) Kennedy Oilfield; (f) Morgan Construction; (g) Fraser Bay Development.

For the CIBC Transaction

- 6) the CIBC loan appears to have been made to Glenn by CIBC (New York) instead of CIBC (Canada). Why was this? Did Glenn withhold on interest payments made to CIBC (New York) and if not why not?
- 7) send me the documents listed in Part IV of the list of Closing Documents, namely, the Tax Form W-8, the CIHI Note, etc.

1591

- 8) Send me the opinion in Part V(1) of the list of Closing Documents.
- 9) Send me a copy of every other document on the list of Closing Documents that has not either been sent already by Jas or listed above.
- 10) determine whether Angie Karna, the signatory to the letter dated June 15, 1998 to Jas, still works at the CIBC?
- 11) Give me BDO's initial analysis of why the deemed capital gain on the Falcon shares would not have been increased by the accrued interest on the CIHI Note.

Dave (and Jas), I realize this is a daunting list but as I mentioned on the phone, in tax law heaven is in the details, so we need to get going on these items ASAP, and I think setting even some rough deadlines would be helpful. Glenn has asked me to keep him up-to-date on the progress of the litigation, so I would like to be able to get back to him soon with our intended plan of action.

Yours Truly
Joel A. Nitikman
Partner
FRASER MILNER CASGRAIN LLP
15th Floor - 1040 West Georgia Street
Vancouver, BC V6E 4H8
tel: (604) 443-7115
cell: (604) 805-7114
fax: (604) 683-5214
joel.nitikman@fmc-law.com



FRASER MILNER CASGRAIN, Commissioner for Taking Affidavits for British Columbia

This is Exhibit " 13 " referred to
 in the Affidavit of GLENN
WALSH sworn before me
 this 3 day of JULY, 20 12

[Signature]

Glenn Walsh
 000401

Date JAN. 14/03
 Time _____ A.M./P.M.
 Tel. Int.
 Sol. JAN

- were loans made
- were they made by Glenn
- were they made to Branch
- were they deductible in law
- introduced to Branch through JAS
- Branch / Glenn / JAS had dinner one night in Calgary - Branch chartered a flight to get there - had an entourage - Barker, Kpoll, g-y.
- Branch was doing a deal to buy an oil well in Bulgaria
- Glenn loaned him \$1 million US
- Branch had more crises so Glenn loaned him more
- which Bank accounts did money come from? Dave Ham at Tercon will know.
- why did Glenn make the loan with no security? Branch said he had an interest in his father's estate.
- Glenn was son. Tom's in the pit and recently

FMC

FRASER MILNER CASGRAIN LLP

Client

Date

Re

Time A.M./P.M.

Tel. Int.

Sol.

and they've worked out for him.

- did a similar deal on an ex-employee buying a
magazine for \$25,000 Canadian (20 years ago)

- Glenn took some comfort from the fact that DAS
knew him and the branch had a regular
people in his entourage

- branch in EAST INDIA - Glenn to DAS got his
name from his uncle who is prominent
in the EAST Indian community.

- Glenn and Branch had a number of meetings
in Vancouver in March/98

Glenn has a notebook for 1998 - Glenn will get
me a copy

- Glenn was supposed to get a "piece" of the
Bulgaria deal some time - he will try
to get more information on this.

- Glenn doesn't remember how \$130,000 loan
came to be.

- Glenn doesn't know what Branch did with money.

- BRIAN MACLEAN was involved in trying to get



FRASER MILNER CASGRAIN LLP

Client
Re
.....
.....

Date
Time A.M./P.M.
Tel. Int.
Sol.

Branch to sign a Security Agreement.

- in last 10 years Glenn may have made 2 or 3 other loans?

- could BDO have records of interest earned on other loans?

- Not sure if he has any capital gain & grant which to deduct loss on BDO's loan?

- did DAJ get advice from FMC

- Glenn has made a number of shares/doll loans without interest:

- 1) MCON - \$500k (loan)
- 2) TAG Construction
- 3) Manlyan Rock Products
- 4) Caliber Systems
- 5) Kennedy Oilfield Services
- 6) Manlyan Construction
- 7) Fraser Bay Developments - VERY little

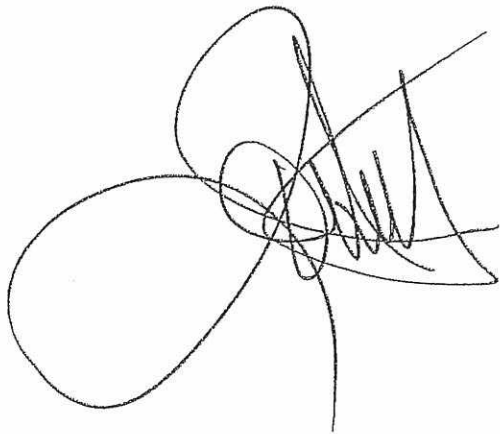
Paul Tecon - DC.CA

FEBRUARY 26 2002
37
ml

PROMISSORY NOTE



I, JOHN NESBITT AGREE TO PAY
GLENN WALSH C\$30,000.00 ON OR
BEFORE MARCH 26, 02. ANY AMOUNT
NOT PAID BY THIS DATE WILL ACCRUE
INTEREST CALCULATED MONTHLY AND
COMPOUNDED AT 10% PER ANNUM.



WITNESSED BY:

Arlene Beentham
6115 Winch St.
Burnaby BC.
V8B 2L4.
ph # 294-2402

JD
Mar 21,
03
BAI


Glenn Walsh - Appeals
GW, Curtis Stewart, Chris Simard - JB

Personal

1. If we lose on the \$25 million debt.
GW would then look at bankruptcy
Chris needs to look at the ability
to petition as a Non Resident into
bankruptcy.

2. What if we were to negotiate with
them, this Fall?

This is Exhibit " 14. "referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY, 2012


A Commissioner for Taking Affidavits
for British Columbia

Glenn Walsh Tax Appeals (Nitikman)

Butalia, Jas
From: Butalia, Jas
Sent: Wednesday, May 07, 2003 1:59 PM
To: 'Nitikman, Joel'; 'Dave@tercon.bc.ca'
Cc: Butalia, Jas
Subject: RE: Glenn Walsh status of Notice of Objection 1998 and 1999 taxatio n years

Joel, please obtain clarification for the "cash draws". I don't know what this point means. Thanks.

Regards,

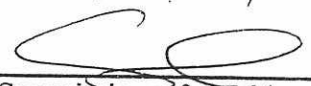
BDO Dunwoody LLP

Per:

Jas Butalia, B.Sc., CA, TEP

Direct line: 403-531-0535
Main line: 403-266-5608
Fax: 403-233-7833
Cell: 403-874-6833
Email: jbutalia@bdo.ca

This is Exhibit " 15 " referred to in the Affidavit of GLENN WALSH sworn before me this 3 day of JULY, 2012


A Commissioner for Taking Affidavits for British Columbia

—Original Message—

From: Nitikman, Joel [<mailto:Joel.Nitikman@fmc-law.com>]
Sent: Wednesday, May 07, 2003 1:52 PM
To: 'Dave@tercon.bc.ca'
Cc: 'jbutalia@bdo.ca'
Subject: Glenn Walsh status of Notice of Objection 1998 and 1999 taxatio n years

Dave, I have had recent discussions with Dave Turner, the Appeals Officer in Ottawa handling Glenn's Notice of Objection. Here is the scoop:

- 1) Dave intends to confirm the reassessments, which means we will have to go to court to defend the case.
- 2) Dave generally agrees with most of the positions put forward by the auditor as different reasons for reassessing, although not all of them. He agrees that some of the points are weak, but notwithstanding my efforts to convince him to drop the weak arguments he is reluctant to do that because he doesn't want to tie the hands of the Justice lawyer who will argue the case for the CCRA. However, he has agreed to go over it again to see which if any arguments he is willing to drop.
- 3) Dave mentioned an issue having to do with "cash draws", which I think are different from the Braich loans and the departure tax. If this rings a bell with either you or Jas let me know, otherwise I will call him back to ask what it's about.
- 4) on the Braich loans his position is that the loans were capital losses because Glenn had no business of making loans. However, he is leaving that up to the local appeals officer here in BC to make a final decision. I will be writing her to make submissions on that point and will cc you with the letter.
- 5) the process now if that Dave sends a written recommendation to the local appeals officer, who then confirms the reassessment. We will get a copy of the confirmation and will have 90 days to appeal to the Tax Court of Canada. I will contact you when we get the confirmation to discuss that step.

If you have any questions let me know.

yours truly,
Joel A. Nitikman
Partner
FRASER MILNER CASGRAIN LLP
15th Floor - 1040 West Georgia Street
Vancouver, BC V6E 4H8
tel: (604) 443-7115
fax: (604) 683-5214
cell: (604) 805-7114
joel.nitikman@fmc-law.com

THIS MESSAGE IS INTENDED ONLY FOR THE ADDRESSEE. IT MAY CONTAIN PRIVILEGED OR CONFIDENTIAL INFORMATION. ANY UNAUTHORIZED DISCLOSURE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR PLEASE NOTIFY US IMMEDIATELY SO THAT WE MAY CORRECT OUR INTERNAL RECORDS. PLEASE THEN DELETE THE ORIGINAL MESSAGE. THANK YOU.

FRASER MILNER CASGRAIN LLP is an Alberta Limited Liability Partnership.

Renaud, Julie

From: Butalia, Jas
Sent: Tuesday, June 03, 2003 1:07 PM
To: Renaud, Julie
Subject: FW: CCRA meeting

Please file in the Glenn Walsh re Tax Audit re Nitikman file. Thanks.

Regards,

BDO Dunwoody LLP

Per:

Jas Butalia, B.Sc., CA, TEP

Direct line: 403-531-0535
Main line: 403-266-5608
Fax: 403-233-7833
Cell: 403-874-6833
Email: jbutalia@bdo.ca

-----Original Message-----

From: Dave Horne [mailto:Dave@tercon.bc.ca]
Sent: Tuesday, June 03, 2003 12:23 PM
To: Joel Nitkman; Jas Butalia
Subject: CCRA meeting

Joel,


I spoke to Glenn regarding your planned meeting with CCRA at the end of June.

He thinks it is a good idea and to count him in.

Regards,

Dave

This is Exhibit " 16 "referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY, 20 12


A Commissioner for Taking Affidavits
for British Columbia

Renaud, Julie

From: Butalia, Jas
Sent: Saturday, June 07, 2003 9:06 AM
To: Renaud, Julie
Subject: FW: Fax of June 4

Please file in the Glenn Walsh re Tax Appeals file (Nitikman). Thanks.


Regards,

BDO Dunwoody LLP

Per:

Jas Butalia, B.Sc., CA, TEP

Direct line: 403-531-0535
Main line: 403-266-5608
Fax: 403-233-7833
Cell: 403-874-6833
Email: jbutalia@bdo.ca

This is Exhibit " 17 "referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY, 2012

A Commissioner for Taking Affidavits
for British Columbia

-----Original Message-----

From: Butalia, Jas
Sent: Saturday, June 07, 2003 9:05 AM
To: 'Nitikman, Joel'; 'Dave Horne'
Cc: Butalia, Jas; Boyle, Patrick
Subject: RE: Fax of June 4

Joel, I have already notified the other client.
Is the date of the meeting July 6 & not June 6? Thanks.
Regards,

BDO Dunwoody LLP

Per:

Jas Butalia, B.Sc., CA, TEP


Direct line: 403-531-0535
Main line: 403-266-5608
Fax: 403-233-7833
Cell: 403-874-6833
Email: jbutalia@bdo.ca

-----Original Message-----

From: Nitikman, Joel [mailto:Joel.Nitikman@fmc-law.com]
Sent: Friday, June 06, 2003 12:32 PM
To: 'Dave Horne'
Cc: 'jbutalia@bdo.ca'; Boyle, Patrick
Subject: RE: Fax of June 4

In regards to the meeting, it is now set for Thursday June 6, 2003 at 11 AM Ottawa time. We will be meeting with Dave Turner, Head Office Appeals, and Paul Lynch, a Director of the Rulings department and chair of the GAAR Committee. I will be taking with me my Toronto partner Patrick Boyle, formerly a member of the GAAR Committee. Patrick and I will spend time on the 25th discussing our presentation and then go to Ottawa for the meeting.

This is Exhibit " 18 "referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY ,2012


A Commissioner for Taking Affidavits
for British Columbia

June 27, 2003

27 Sat



Exhibit No. 6

Wns: G. Walker

Date: Apr. 26/12

Wayne Biko

- Jamie Hutton (1 sock)
- [unclear]
- + 3:00 pm - Joel, Joe, Dave

Visit Peter Duggan (Mine Syst) @ Symonds - re ~~the~~ island and limestone roads -

- Road too soft, good digging (-14-15 to bitumen. of a max 18")
- Roads very soft in pit, but no limestone for a few years - will have some acidstone - dry good?
- 4100 P/H - 100,000 at 1/21 times if trucked up
 - Avg ~ 4000 tph? - will have 5
 - (5 x 4000 x 21 - 420,000 ~~to~~ tpd.?)
- Strip ratio ~ 1/1 (280,000 ton + 140,000 qb??)
- Roads - \$4.5 m / year capital + 1 m op's (maint?)
- Susan Lake gravel - \$2 / m³ loose royalty - trucked w/ 777's
- New - 1 to 2 m of pit sand + 1 m gravel ~~to~~ + sand on top for surface.

"Sea Charge" - Alton & Gail - Bennett Island near Georges till 2nd - dancing @ Georges on 1st

Joel, Joe, Dave.

- Ottawa - CIBC (fire) + others - 2 hrs. along w/ Peter + my file supervisor + head of AAAA
- but - pers. settlement offer? up to us - they think 50¢ on dollar - default after 1st year - 2nd yr - 50% of interest.

Alton Federico - 10/29/291 - 4777 - PCL - caly
- was at Alton

Dave - AAA 3PM Wed

This is Exhibit " 19 "referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY, 2002



A Commissioner for Taking Affidavits
for British Columbia

FRASER MILNER CASGRAIN LLP

JOEL A NITIKMAN
Direct Line (604) 443-7115
Email joel.nitikman@fmc-law.com

July 14, 2003

BY EMAIL

Glenn Walsh

Dear Sirs:

Possible Settlement with the CCRA

I enclose three schedules of calculations. Note the following:

1. Your reassessment for your 1998 year shows a balance owing (as of October 10, 2002) of \$45,252,126. The reassessment is based on the following assumptions:

(a) benefit received from Tercon	\$12,717
(b) Braich loans disallowed	\$3,024,650
(c) 75% taxable capital gain from deemed disposition of Falcon shares	\$36,089,733
(d) interest deductions disallowed	\$47,499,148

2. Your reassessment for the 1999 year shows a balance owing (as of October 10, 2002) of \$704,370. The reassessment is based on disallowing a loss carryforward of \$5,934,640 from 1998 but allowing total loss carryforwards of \$247,920 from 1996 and 1997 into 1999

3. As shown in schedule 3, the tax plus interest payable for 1998 had you not done the CIBC Transaction (but assuming you are entitled to the Braich bad debt deduction) would have been \$25,790,669. For 1999 it would have been \$740,941 (this is essentially the same as the 1999 tax reassessed plus interest from October 10, 2002 to June 30, 2003).

1530

FRASER MILNER CASGRAIN LLP

Page 2

4. As shown in schedule 1, if we agree to settle the matter on the basis that the 1998 interest expense is 100% deductible and 2/3 of the 1999 interest payable to Phoenix on the CIHI Note is taxable as a capital gain on the disposition of the Falcon shares (and assuming we win the Braich matter), then your tax payable for 1998 (including interest to June 30, 2003) would be \$8,036,164 and for 1999 would be \$740,941. This schedule assumes the Tercon benefit is included in income.

5. Schedule 2 shows that if we agree to settle the matter on the same basis but assuming we lose on Braich, 1998 tax plus interest would be \$10,326,282 and 1999 would again be \$740,941. This schedule assumes the Tercon benefit is included in income. Thus, schedule 2 is based on the same assumptions as the current reassessments except for those assumptions relating to the CIBC Transaction.

We think a reasonable settlement offer would be as shown in schedule 2. This offer would not affect our ability to continue to object to the both the Braich issue and the Tercon issue, so that your actual tax payable may be less than as shown in schedule 2 if we win on either of those issues. Further, if we do not get a 100% deduction for the Braich loans it may be possible to treat them as a capital loss and set them off against the capital gain on the Falcon shares. We also intend to try to mitigate interest owing on any tax reassessed as much as possible.

Please let us have your instructions on whether to make this offer to the CCRA as soon as possible.

Yours truly,
FRASER MILNER CASGRAIN LLP

Joel A. Nitikman

Per:
Joel A. Nitikman

JAN
encl

cc (w/e) Jas Butalia

GLENN WALSH
ESTIMATION OF TAXES PAYABLE ON REASSESSMENT

WIN ON BRAICH

Facts: As Filed

Income as filed per 1998 income tax return	41,572,577
Deductions from income as filed	(47,507,217)
Loss reported in return	<u>(5,934,640)</u>
October 10, 2002 Notice of Reassessment ("N of R")	
Benefits from Tercon	12,717 Accepted
Bad debt not allowed re Braich	3,024,650 Objected
Proceeds of Disposition of Falcon Enterprises	28,596,224 Objected
Interest expense disallowed	47,499,148 Objected
Revised net and taxable income per N of R	<u>73,198,099</u>

Glenn was a resident of British Columbia for the 1998 taxation year

Assumptions:

Braich Bad Debt Expense has not been resolved with CCRA For computations Braich
Bad Debt will be deducted in the computation of the taxable income

Proceeds of disposition of Falcon Enterprises to be 2/3 assessed by CCRA

Previous	Proceeds of disposition per CCRA	48,128,299
	Adjusted Cost Base	8,653
	Previous Capital Gain	<u>48,119,646</u>
	Previous Taxable Capital Gain	36,089,735
Revised	Revised Proceeds of disposition @ 2/3	32,085,533
	Adjusted Cost Base	8,653
	Revised Capital Gain	<u>32,076,880</u>
	Revised Taxable Capital Gain	24,057,660

Interest on arrears will commence May 1, 1999

Revised Taxable Income:

Taxable income per Notice of Reassessment	73,198,099
Bad Debt Expense previously disallowed	(3,024,650)
Deduct interest expense for 1998 previously disallowed	(47,499,148)
Deduct Previous Taxable Capital Gain	(36,089,735)
Add Revised Taxable Capital Gain	24,057,660
	<u>10,642,226</u>

Tax Payable:

Federal Tax Payable

First \$29,590 at 17%	\$	5,030
\$29,591 - \$59,180 at 26%		7,693
Greater than \$59,180 at 29%		3,069,083
Total Federal Tax	\$	<u>3,081,807</u> A

Total Personal Tax Credits		
Personal	\$	6,421
CPP		2,138
Personal supplement		-
	\$	<u>8,559</u>

Personal tax credits at 17%	\$	<u>1,455</u> B
-----------------------------	----	----------------

Personal Tax Credit Supplement		
Base Amount	\$	500
Spousal Amount	\$	-
	\$	<u>500</u>

Net income	\$	10,642,226
Deduct \$6,956	\$	6,956
	\$	<u>10,635,270</u>

Multiply by 4%	\$	425,411 C
----------------	----	-----------

\$500 less amount C	\$	-
---------------------	----	---

Multiply by 50%		<u>-</u>
-----------------	--	----------

Basic Federal Tax ("BFT")	\$	<u>3,080,352</u> A-B
---------------------------	----	----------------------

Federal Sur Tax		
Basic Amount x 3%		92,411

Basic Amount less 12,500 x 5%		153,393
-------------------------------	--	---------

Total Federal Tax Payable		<u>3,326,155</u>
---------------------------	--	------------------

BC Tax Payable

Basic Provincial Tax at 50 5%	\$	1,555,578
-------------------------------	----	-----------

BC Sur Tax		
Basic Tax less \$5300 x 30%	\$	465,083

Basic Tax less \$8600 x 26%	\$	402,214
-----------------------------	----	---------

Total BC Taxes Payable	\$	<u>2,422,875</u>
------------------------	----	------------------

Total Taxes Payable		<u>5,749,030</u>
---------------------	--	------------------

Interest on Arrears		2,287,134
---------------------	--	-----------

<u>Total Payable for This Taxation Year</u>		<u>8,036,164</u>
---	--	------------------

<u>Total Payable for 1999 Taxation Year</u>		568,869
---	--	---------

Interest on Arrears for Prior Year		172,072
------------------------------------	--	---------

		<u>740,941</u>
--	--	----------------

<u>Total Payable for All Years</u>		<u>8,777,105</u>
------------------------------------	--	------------------

GLENN WALSH
ESTIMATION OF TAXES PAYABLE ON REASSESSMENT

LOSE ON BRAICH

Facts: As Filed

Income as filed per 1998 income tax return	41,572,577	
Deductions from income as filed	(47,507,217)	
Loss reported in return	<u>(5,934,640)</u>	
October 10, 2002 Notice of Reassessment ("N of R")		
Benefits from Tercon	12,717	Accepted
Bad debt not allowed re Braich	3,024,650	Objected
Proceeds of Disposition of Falcon Enterprises	28,596,224	Objected
Interest expense disallowed	47,499,148	Objected
Revised net and taxable income per N of R	<u>73,198,099</u>	

Glenn was a resident of British Columbia for the 1998 taxation year

Assumptions:

Braich Bad Debt Expense has not been resolved with CCRA For computations Braich Bad Debt will be deducted in the computation of the taxable income

Proceeds of disposition of Falcon Enterprises to be 2/3 assessed by CCRA

Previous	Proceeds of disposition per CCRA	48,128,299
	Adjusted Cost Base	8,653
	Previous Capital Gain	<u>48,119,646</u>
	Previous Taxable Capital Gain	36,089,735
Revised	Revised Proceeds of disposition @ 2/3	32,085,533
	Adjusted Cost Base	8,653
	Revised Capital Gain	<u>32,076,880</u>
	Revised Taxable Capital Gain	24,057,660

Interest on arrears will commence May 1, 1999

Revised Taxable Income:

Taxable income per Notice of Reassessment	73,198,099
Bad Debt Expense previously disallowed	
Deduct interest expense for 1998 previously disallowed	(47,499,148)
Deduct Previous Taxable Capital Gain	(36,089,735)
Add Revised Taxable Capital Gain	24,057,660
	<u>13,666,876</u>

Tax Payable:

Federal Tax Payable

First \$29,590 at 17%	\$	5,030	
\$29,591 - \$59,180 at 26%		7,693	
Greater than \$59,180 at 29%		3,946,232	
Total Federal Tax	\$	<u>3,958,956</u>	A

Total Personal Tax Credits			
Personal	\$	6,421	
CPP		2,138	
Personal supplement		-	
	\$	<u>8,559</u>	
Personal tax credits at 17%	\$	<u>1,455</u>	B

Personal Tax Credit Supplement			
Base Amount		\$	500
Spousal Amount		\$	-
		\$	<u>500</u>

Net income	\$	13,666,876
Deduct \$6,956	\$	<u>6,956</u>
	\$	<u>13,659,920</u>

Multiply by 4% \$ 546,397 C

\$500 less amount C \$ -

Multiply by 50% -

Basic Federal Tax ("BFT") \$ 3,957,501 A-B

Federal Sur Tax		
Basic Amount x 3%		118,725
Basic Amount less 12,500 x 5%		197,250

Total Federal Tax Payable 4,273,476

BC Tax Payable

Basic Provincial Tax at 50 5% \$ 1,998,538

BC Sur Tax
Basic Tax less \$5300 x 30% \$ 597,971

Basic Tax less \$8600 x 26% \$ 517,384

Total BC Taxes Payable \$ 3,113,893

Total Taxes Payable 7,387,369

Interest on Arrears 2,938,913

Total Payable for This Taxation Year 10,326,282

Total Payable for 1999 Taxation Year 568,869

Interest on Arrears for Pnor Year 172,072

740,941

Total Payable for All Years 11,067,223

GLENN WALSH
ESTIMATION OF TAXES PAYABLE ON REASSESSMENT

NO CIBC TRANS

Facts: As Filed

Income as filed per 1998 income tax return

Employment income				3,000
Other employment income				29,853,531
Interest and other investment income				1,646
Capital gains	Capital Gain			9,383,597
Conex	2520114 48 @ 75%	1890085 9		
Holigresus	0 @ 75%	0		
Falcon	9991347 08 @ 75%	7493510 3		
Self employment income, includes loss on loan to Braich				2,330,805
Total income per return				<u>41,572,579</u>
Accounting fees				8,069
Interest expense				47,499,148
Total deductions per return				<u>47,507,218</u>
Loss per return				<u>(5,934,639)</u>
Adjustments to return as filed				
Benefits from Tercon per Notice of Reassessment				12,717
Interest expense re CIBC				47,499,148
Accounting fees re Falcon transaction				7,600
Taxable Capital Gain Falcon				(7,493,510)
Revised Taxable Income				<u><u>34,091,316</u></u>

GLENN WALSH
ESTIMATION OF TAXES PAYABLE ON REASSESSMENT

NO CIBC TRANS

Facts: As Filed

Income as filed per 1998 income tax return

Employment income			3,000
Other employment income			29,853,531
Interest and other investment income			1,646
Capital gains	Capital Gain		9,383,597
Conex	2520114 48 @ 75%	1890085 9	
Holigresus	0 @ 75%	0	
Falcon	9991347 08 @ 75%	7493510 3	
Self employment income, includes loss on loan to Branch			2,330,805
Total income per return			<u>41,572,579</u>
Accounting fees			8,069
Interest expense			47,499,148
Total deductions per return			<u>47,507,218</u>
Loss per return			<u>(5,934,639)</u>
Adjustments to return as filed			
Benefits from Tercon per Notice of Reassessment			12,717
Interest expense re CIBC			47,499,148
Accounting fees re Falcon transaction			7,600
Taxable Capital Gain Falcon			(7,493,510)
Revised Taxable Income			<u><u>34,091,316</u></u>

Renaud, Julie

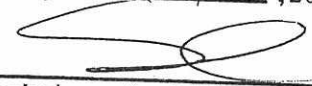
From: Butalia, Jas
Sent: Wednesday, July 23, 2003 10:04 AM
To: Renaud, Julie
Subject: FW: Glenn Walsh settlement

Please file in the Glenn Walsh file for Joel Nitikman. Thanks.

BDO Dunwoody LLP,

per: Jas Butalia, B.Sc, CA, TEP.

Direct: 403-531-0535
Main: 403-266-5608
Fax: 403-233-7833
Mobile: 403-874-6833
E-mail: jbutalia@bdo.ca

This is Exhibit " 20 "referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY, 20 12

A Commissioner for Taking Affidavits
for British Columbia

-----Original Message-----

From: Butalia, Jas
Sent: Tuesday, July 22, 2003 6:24 PM
To: 'Dave@tercon.bc.ca'
Subject: Re: Glenn Walsh settlement

Dave, I am heading back from High River in a few moments.

I am available on Thursday from 0830-1000 hrs Pacific & I am booked in for appointments after that on that day.

I did speak to Curtis before he left on holidays & his view was that the CCRA would not go for the wrap around of all the reassessments. I therefore asked Joel what he thought of it. I have not heard from him on that point.

I did revisit the security issue with Curtis & he feels strongly about it still. Thus, if the security is good, it seems to me that Glenn can walk from the settlement & still have his receivable. Butn he would not be able to return to Canada. However, I would like to get the lawyers to give the final response on that!!

I am available in about 20 minutes @ 403-874-6833, subject to the cell phone service. Or, you can call me tomorrow morning @ 403-874-6833.

Thanks.

BDO Dunwoody LLP,
Per: Jas Butalia.

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Dave Horne <Dave@tercon.bc.ca>
To: Jas Butalia <jbutalia@bdo.ca>
Sent: Tue Jul 22 11:49:24 2003
Subject: Glenn Walsh settlement

Jas,

I spoke with Joel Nitikman and he would like a conference call to discuss how to proceed with a settlement offer. Would also like to know

if we should roll the company reassessments into the offer.

Glenn is available today or thursday morning.

If we agree to Joel's senario, what impact does it have on the company reassessments?

If Glenn goes to court and losses, is he still able to enter the country?

an CCRA seize all his personal assets that he brings into the country? If we tie a company settlement to Glenn's personal settlement, does the payment of a final amount become intertwined so that the company may be on the hook for the whole amount?

Are you or Curtis close on determining what a settlement for Tercon Contractors or Conex might be?

Dave

Glenn Walsh

This is Exhibit " 21 " referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY, 20 12



A Commissioner for Taking Affidavits
for British Columbia

Subject: Glenn Walsh
Date: Fri, 25 Jul 2003 09:00:34 -0700
From: Dave Home <Dave@tercon.bc.ca>
To: Chris Simard <simardc@bennettjones.ca>

Chris,

CCRA has reassessed Glenn personally \$45 million in tax. Glenn is contemplating personal bankruptcy.

We have been advised by Joel Nitikman a lawyer in Vancouver that Glenn will never receive a discharge from the bankruptcy and therefore will never be able to reside in Canada. He also stated that CCRA will probably go after any worldwide disbursement of funds to Glenn.

Can CCRA access a disbursement of funds from Apex to Glenn?
Can CCRA get control of any shares of Conex, Apex, or the Cambell Trust?

What happens when Glenn dies and his shares or interest in the family trust gets past on to his children or wife? Can CCRA obtain control or access any disbursement of funds?

What happens to Glenn's assets that he may own personally? Can CCRA only seize them if he brings them into Canada.

If he is bankrupt he will lose his ability to obtain credit. Is this worldwide?

Presumably he will be able to have an Apex corporate credit card.

What other problems would this cause him?

TRUSTEE APPOINTED

ALL ASSETS IN WORLD

00000065

- Level One – Limited contact – brief overview of the final product
- Level Two – Approximately 2 hours review
- Level Three – Active Participation in the research


Reviewing Lawyer:

Billable Time Spent hrs Billable Rate \$ _____ Signature

RESEARCH MEMORANDUM

CLIENT: Glenn Walsh / Tercon Contractors Ltd.
MATTER: Tax Appeal
DATE: August 6, 2003
FILE NO.: 49605-1
PREPARED BY: Deirdre Sheehan
PREPARED FOR: Chris Simard
REVIEWED BY:
RE: Availability of Bankruptcy Proceedings with respect to a Foreign Debtor; Effect of Bankruptcy on Residency under ITA

This is Exhibit " 22 " referred to in the Affidavit of GLENN WALSH sworn before me this 3 day of JULY, 2012


 A Commissioner for Taking Affidavits for British Columbia

FACT(S)

Our client, Mr. Walsh, faces a significant tax liability (potentially in the millions of dollars) to the Canadian Custom and Revenue Agency ("CCRA") under the *Income Tax Act*, R.S.C. 1985, c. 1 ("ITA"). For the purposes of this memo, it is assumed that Mr. Walsh is a non-resident for the purposes of residency under the ITA. Mr. Walsh owns one house in Canada, which is heavily encumbered.

Mr. Walsh would like advice as to the applicability of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("BIA"), to his situation.

ISSUE(S)

Specifically, you have asked me to research the following issues:

1. Could the CCRA petition Mr. Walsh into bankruptcy under the BIA?
2. Could Mr. Walsh make an assignment in bankruptcy under the BIA?

3. How would either being petitioned into bankruptcy or making an assignment in bankruptcy affect Mr. Walsh's status as a non-resident under the ITA?

CONCLUSION(S)

As to the applicability of the BIA to Mr. Walsh, generally, a creditor may petition a "debtor" into bankruptcy and an "insolvent person" may make an assignment in bankruptcy. The definition of "debtor" includes an "insolvent person". Among other criteria, an "insolvent person" is someone who "resides, carries on business, or has property in Canada". Although I am unaware of any commentary or caselaw discussing the court's jurisdiction under the BIA on the sole basis of a person having property in Canada, a plain reading of the BIA indicates that its provisions are applicable to a foreigner who merely owns property in Canada. Therefore, on the basis that Mr. Walsh owns a house in Canada, it appears that he is a person who may either be petition or assigned into bankruptcy (provided that other criteria, such as an act of bankruptcy and a debt of more than \$1,000.00, which are discussed below, are also met).

On the facts known to me at this point, including that Mr. Walsh is a non-resident under the ITA, it seems unlikely that he would be a "debtor" or "insolvent person" on the basis of residing or carrying on business in Canada. However, these are factual tests, wherein the Court will look to a number of factors, including holding assets in Canada and any representations of the debtor as to residency. Therefore, specific facts relating to Mr. Walsh's dealings in Canada are necessary to make a proper determination of this point.

Assuming the Mr. Walsh is either petitioned or assigned into bankruptcy on the basis of owning property in Canada, it does not seem likely that this fact would affect his residency under the ITA, as determined at Common Law. The Common Law test for residency is factually based and includes an assessment of residential ties with Canada and of the "spatial bounds within which he spends his life or to which his ordered or customary living is related." Provided other factors indicate that Mr. Walsh is not a Canadian resident, it seems unlikely that a single act of attorning to Canadian courts in a bankruptcy proceeding on the basis of owning property in Canada would alter his residency status.

In addition, I did not locate any specific provision of the ITA that deems a person who is bankrupt under the BIA a resident of Canada.

DISCUSSION

1. Could the CCRA petition Mr. Walsh into bankruptcy?

Section 43 of the BIA establishes the criteria necessarily present for a creditor to petition a person into bankruptcy:

- 43. (1) Subject to this section, one or more creditors may file in court a petition for a receiving order against a debtor if, and if it is alleged in the petition that,
 - (a) the debt or debts owing to the petitioning creditor or creditors amount to one thousand dollars; and
 - (b) the debtor has committed an act of bankruptcy within six months next preceding the filing of the petition.

The main criteria are therefore as follows:

- (a) the petition must be filed by one or more creditors;
- (b) the petition must be filed against a "debtor";
- (c) the debt owing to a petitioning creditor must amount to \$1,000.00; and
- (d) the debtor must have committed an "act of bankruptcy" within the preceding six months.

Each of these criterion are examined individually as follows.

- (a) **the petition must be filed by one or more creditors;**

Case law has indicated that the CCRA may bring a petition for bankruptcy under the BIA: *Slattery v. Doane Raymond Ltd.* (1996), 106 D.L.R. (4th) 212 (SCC). Section 2(1) of the BIA defines "creditor" as follows:

"creditor" means a person having a claim, unsecured, preferred by virtue of priority under section 136 or secured, provable as a claim under this Act;

For the purposes of this memo, it is assumed that the CCRA will fall within the definition of "creditor."

(b) the petition must be filed against a "debtor";

"Debtor" is defined in section 2(1) of the BIA as follows:

"debtor" includes an insolvent person and any person who, at the time an act of bankruptcy was committed by him, resided or carried on business in Canada and, where the context requires, includes a bankrupt;

Therefore, it appears that should an individual be able to meet the definition of "insolvent person", he or she will fall within the definition of "debtor" and be someone against whom a petition for a receiving order may be brought. "Insolvent person" is also defined in section 2(1):

"insolvent person" means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

The criteria necessary to meet the "insolvent person" test are that:

- the person is not a "bankrupt". Bankrupt is defined in section 2(1) of the BIA as "a person who has made an assignment or against whom a receiving order has been made or the legal status of that person." As I understand the facts, Mr. Walsh does not have a receiving order against him and has not made an assignment in bankruptcy.
- the person has liabilities to creditors provable as claims under this Act, amounting to \$1,000.00. For the purposes of this memo, it assumed that the tax liability of Mr. Walsh to the CCRA would be a claim provable, amounting to more than \$1,000.00. Although the definition of "insolvent person" refers to liabilities to "creditors" (plural), it has been held that a liability to a single creditor is sufficient to meet this criterion of "insolvent person": *Canada (A.G.) v. Gordon (Trustee of)* (1992), 15 C.B.R. (3d) 100 (Sask. Q.B.).
- the person must also establish that he or she is someone:

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(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

It is assumed that should Mr. Walsh's liability to the CCRA for taxes would put him in a position that one, or all, of these criteria would be met.

- finally, the person must also reside, carry on business or have property in Canada.

Foreigners who come within the provisions of "debtor" under s. 2(1) can be petitioned into bankruptcy: Houlden & Morawetz, *Bankruptcy and Insolvency Law of Canada*, looseleaf, vol 2. (Scarborough, Ont.: Carswell, 2003) at D§3.

The definition of "insolvent person" was amended by S.C.1997, c. 12, s.1, to include the phrase "or has property". Prior to this amendment, an insolvent person either had to reside or carry on business in Canada. I am unaware of any case law considering phrase "or has property in Canada" within the definition of "insolvent person" or of any cases in which a person was found to be a debtor (or insolvent person) on the sole basis of owning property in Canada. Nonetheless, prior to this amendment, one commentator opined that the presence of assets in Canada should be sufficient to establish that a foreign corporation carried on business in Canada and would establish a sufficient connection between the foreign debtor and Canada to give the Canadian courts jurisdiction: John Honsberger, Q.C., "Reaching Canadian Assets of Foreign Debtors Through Local or Foreign Bankruptcy Proceedings", (1993), 18 C.B.R. (3d) 301 at 319-320.

On the basis of a plain reading of the definition of "insolvent person", it would appear that Mr. Walsh falls within the definition of "debtor" on the basis of owning property in Canada, provided that the other criteria of the definition of "insolvent person" are met.

In addition, non-residents have been held to be subject to the BIA, either on the basis of residing or carrying on business in Canada at the time of an act of bankruptcy, both of which are

questions of fact: *Salloway, Re* (1939), 20 C.B.R. 309 (Ont. C.A.); *Ex parte and re Charles Bright*, (1903), 19 T.L.R. 203 (C.A.), cited in Honsberger, "Reaching Canadian Assets of Foreign Debtors Through Local or Foreign Bankruptcy Proceedings", *supra* at 315.

It appears that the Court will look at all the circumstances of the debtor, including any statements as to residency made by the debtor and the presence of property or other assets in Canada, in determining whether a debtor resides or carries on business in Canada. Some cases discussing the status of persons purporting to be non-residents under the BIA are as follows:

- In *Chu (Re)*, [1995] O.J. No. 4542 (Gen. Div.), Chu argued that he lived in Taiwan, had no business in Canada, no creditors in Canada (the petitioning creditor being from Hong Kong), no assets in Canada and that therefore he was not a "debtor." However, the Court held that Chu was a resident of Canada at the relevant time on the basis that: a) Chu described himself as being of the City of North York in a power of attorney; b) a corporate filing by Chu indicated that he was a Canadian resident; and c) Chu had assets in Canada, including a small bank account and the proceeds of a mortgage.
- In *Dalsto (Bankrupt), Re*, [2002] O.T.C. 949 (Sup. Ct. (Gen. Div.)), Dalsto and Ballet disputed a petition into bankruptcy on the basis that neither resided or carried on business within the jurisdiction of the Court, nor was the greater portion of their property situate in Toronto. In this case, the Petition was issued on January 17, 2002. Ballett and Dalsto were still signing corporate documents showing their companies as being in Toronto as late as October, 2001. The Minute Books of these companies remained with Dalsto and Ballet's lawyer in Toronto, and Ballett and Dalsto remained the officers, directors and shareholders of these companies. Ballett and Dalsto used their Toronto address as their principal residence for business purposes. Ballett's car loan remained in Toronto and the transfer of the car to Ballett was done in January, 2002, showing his Toronto address. Ballet's drivers' license showed him as resident in Toronto. A power of attorney was signed in 2001, showing Toronto as the place of residence. Therefore, the Court held that Ballet and Dalsto were resident Toronto at the time of their bankruptcies, and, notwithstanding that they had purchased property in California, the greater portion of their property was in Ontario. (Please see discussion of "locality of debtor" below.)
- In *Chauvco Resources Intl. Ltd. (Bankrupt), Re* (1999), 239 A.R. 116 (Q.B.), CRIL disputed a bankruptcy petition on the basis that the Court lacked jurisdiction and that it was not a "debtor." CRIL argued that it was incorporated in Bermuda and carried on business in Gabon, but the Court found that it "carried on business" in Calgary on the basis that: three of CRIL's four employees resided in Calgary and a fourth had an apartment and car leased in Calgary; CRIL's business was administered and controlled through the Calgary office; correspondence from the petitioning creditors was directed to the Calgary office; and that administrative decisions and operations in relation to CRIL were carried out from the Calgary office.

- In addition, where a person is no longer resident in Canada, but has outstanding debts and obligations arising out of business obligations in Canada, a debtor is deemed to have continued to carry on business in Canada, even though it has ceased to carry on business or reside in Canada. The debtor is deemed to carry on business in Canada until the debts have been satisfied: *Re Cheerio Toys & Games* (1969), 13 C.B.R. (N.S.) 41 (Ont. S.C.); *Donaldson (Bankrupt), Re* (1992), 113 N.S.R. (2d) 356 (T.D.). However, in *Purnell, Re*, [1998] A.J. No. 564 (Q.B.), Registrar Waller held that this principle cannot be extended to any insolvent person who has merely incurred debts in a jurisdiction. In this case, Purnell left Alberta to reside in the United States 18 months prior to an application for an assignment in bankruptcy and had no property in Alberta. His primary indebtedness was for student loans. The Court stated that a person incurring student loan debt is not one who carries on business and therefore, the Court did not have jurisdiction to allow a filing in bankruptcy of Purnell.

I am not aware of any facts that might support a conclusion that Mr. Walsh would be an "insolvent person" (and therefore "debtor") on that basis of residing or carrying on business in Canada. Given that he has successfully established himself a non-resident for tax purposes, this would seem to indicate that a finding of residency or carrying on business in Canada is unlikely.

- (c) **the debt owing to a petitioning creditor must amount to \$1,000.00;**

It is assumed that this criterion is met in the present case.

- (d) **the debtor must have committed an "act of bankruptcy" within the preceding six months.**

Section 42 of the BIA lists the circumstances that constitute an "act of bankruptcy". The most common of these is 42(1)(j):

42. (1) A debtor commits an act of bankruptcy in each of the following cases...

- (j) if he ceases to meet his liabilities generally as they become due.

Courts have held that a debt to a single debtor is sufficient to establish an act of bankruptcy under section 42(1)(j), in special circumstances: *Re Puetter* (1998), 6 C.B.R. (4th) 279 (B.C.S.C.). Special circumstances can be established where the petitioning creditor's claim is either the only claim or is so large that the claims of other creditors are of no real significance, so that in effect, there is only one creditor: *Houlden & Morawetz, Bankruptcy and Insolvency Law of Canada, supra* at D§10(j)(3).

It is assumed, based on my understanding of the facts in this case, that the amounts owing to the CCRA would be a significant sum. Therefore, the CCRA could likely avail itself of section 42(1)(j) in establishing an act of bankruptcy against Mr. Walsh, without proof of other creditors.

2. Could Mr. Walsh make an assignment in bankruptcy under the BIA?

Section 49 of the BIA establishes the circumstances under which a person may make an assignment in bankruptcy:

49. (1) An insolvent person or, if deceased, his legal personal representative with the leave of the court, may make an assignment of all his property for the general benefit of his creditors.

(2) The assignment made under subsection (1) shall be accompanied by a sworn statement in the prescribed form showing the property of the debtor divisible among his creditors, the names and addresses of all his creditors and the amounts of their respective claims and the nature of each, whether secured, preferred or unsecured.

(3) The assignment made under subsection (1) shall be offered to the official receiver in the locality of the debtor, and it is inoperative until filed with that official receiver, who shall refuse to file the assignment unless it is in the prescribed form or to the like effect and accompanied by the sworn statement required by subsection (2).

Based on the discussion, above, it is likely that Mr. Walsh could bring himself within the definition of "insolvent person" on the basis that he has property in Canada and make an assignment in bankruptcy.

Another issue arising under section 49 (and section 43(5) with respect to petitions) is that the assignment application (or petition) must be filed in the "locality of the debtor", which is defined as follows:

"locality of a debtor" means the principal place

(a) where the debtor has carried on business during the year immediately preceding his bankruptcy,

(b) where the debtor has resided during the year immediately preceding his bankruptcy, or

(c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated;

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In *Dalsto (Bankrupt), Re, supra*, the Ontario Superior Court appeared to treat the requirement that a petition be filed in the "locality of the debtor" as a jurisdictional hurdle. In that case, the debtors argued that the "greater portion" of their property was in California and that therefore the Court lacked jurisdiction. The Court compared the property owned by the debtors in California to property owned in Toronto, and found that the "greater portion" of the debtor's property was in Toronto and that therefore, the Court had jurisdiction. This decision seems to suggest that it is necessary to establish that the greater portion of a debtor's *worldwide* property must be within Canada for a court to have jurisdiction.

However, in *Chauvco Resources Intl. Ltd. (Bankrupt), Re, supra*, the Alberta Court of Queen's Bench held that the requirement of filing in the "locality of the debtor" was not a jurisdictional issue (at paras. 11-12):

The Petitioners submit that the issue of the "locality of a debtor" only relates to the determination of the proper judicial district within Canada. Once it is proved that a person carried on business in Canada per s. 43(1) of the BIA, such a person is subject to the jurisdiction of the Canadian courts. Only then does the issue of locality of a debtor arise.

I agree with the Petitioners that, only once a petition is properly brought under s. 43(1), does s. 43(5) apply to determine in which judicial district the petition ought to be filed.

With respect, I am of the opinion that the *Chauvco* decision establishes the better approach and that the locality of the debtor is only relevant once the Court's jurisdiction is established. Therefore, it is suggested that a logical interpretation of "locality of debtor" would be to determine where *in Canada* is the greater portion of the debtor's Canadian property in an effort to determine proper judicial district to file the petition or application for an assignment, as the case may be.

Under this approach, Mr. Walsh's "locality" would be where the location of his house.

3. How would either being petitioned into bankruptcy or making an assignment in bankruptcy affect Mr. Walsh's status as a non-resident under the ITA?

(a) the Common Law test

Section 2(1) of the ITA provides that income tax is payable on a the worldwide income of a resident of Canada:

2. (1) An income tax shall be paid, as required by this Act, on the taxable income for each taxation year of every person resident in Canada at any time in the year.

Section 250(3) goes on to provide:

(3) In this Act, a reference to a person resident in Canada includes a person who was at the relevant time ordinarily resident in Canada.

There is no exhaustive definition of residence in the ITA. The case law indicates that residence is a question of fact and has no special or technical meaning. One authoritative case is *Thomson v. MNR*, [1946] S.C.R. 209 at 224-245:

For the purposes of income tax legislation, it must be assumed that every person has at all times a residence. It is not necessary to this that he should have a home or a particular place of abode or even a shelter. He may sleep in the open. It is important only to ascertain the spatial bounds within which he spends his life or to which his ordered or customary living is related. Ordinary residence can best be appreciated by considering its antithesis, occasional or casual or deviatoriy residence. The latter would seem clearly to be not only temporary in time and exceptional in circumstance, but also accompanied by a sense of transitoriness and of return

In Interpretation Bulletin IT-221R3, "Determination of an Individual's Residence", CCRA explains the concept of residency as follows (at para. 2):

The term "resident" is not defined in the Income Tax Act (the "Act"), however, the Courts have held "residence" to be "a matter of the degree to which a person in mind and fact settles into or maintains or centralizes his ordinary mode of living with its accessories in social relations, interests and conveniences at or in the place in question." In determining the residence status of an individual for purposes of the Act, it is also necessary to consider subsection 250(3) of the Act, which provides that, in the Act, a reference to a person "resident" in Canada includes a person who is "ordinarily resident" in Canada. The Courts have held that an individual is "ordinarily resident" in Canada for tax purposes if Canada is the place where the individual, in the settled routine of

his or her life, regularly, normally or customarily lives. In making a determination of residence status, all of the relevant facts in each case must be considered, including residential ties with Canada and length of time, object, intention and continuity with respect to stays in Canada and abroad.

The Bulletin goes on to provide that:

The most important factor to be considered in determining whether or not an individual leaving Canada remains resident in Canada for tax purposes is whether or not the individual maintains residential ties with Canada while he or she is abroad.

Secondary residential ties – such as personal property in Canada, social ties in Canada, and economic ties, such as bank accounts or credit cards – are looked at collectively and it would be unusual for a single secondary residential tie with Canada to be sufficient in and by itself to lead to a determination that an individual is factually resident in Canada while abroad.

Examples of decisions applying these principles are as follows:

- In *Gupta v. R.*, [1999] 1 C.T.C.2482, aff'd [2000] 3 C.T.C. 95, Gupta argued that he was a resident of Canada. In 1988, Gupta came to Canada, applied for landed immigrant status, held investments with Canadian brokers and engaged in a number of significant real estate transactions with a view to investing in residential real estate in Southern Ontario, in which he lost a significant amount of money. He maintained one house in Canada until 1994 but continued to reside in the United States. While the Court accepted that this property was a dwelling house, it stated that this was not sufficient to establish Gupta's residence as Canada because his activities in Canada were not indicative of Canadian residence. The Court held that: "residence in a legal sense is dependent upon what I would call 'home' in a domestic sense, where a person normally lives, where he joins clubs, participates in a religious community, and if he has small children, where the children reside, where they are going to their primary school, etc. There is no evidence that the Appellant and his wife ever lived in that mode or in that style in Canada."
- In *Erikson v. R.* (1975), 75 D.T.C. 5429 (Fed. T.D.), Erikson was an American citizen who had taught in Canadian universities from 1958 to 1969. In early 1970 the taxpayer returned to the United States to teach but his divorced wife and children remained in Canada. During his stay in Canada, he had invested in apartment buildings and one suite in the apartment building was not rented, it being kept for storage purposes. Erikson took over managed of the properties in 1971 and enlisted a resident of the apartments to help. Over 1971-1973, he returned to Canada in the summer months to visit his son and manage the apartments. The taxpayer's appeal of his assessment as a Canadian resident was allowed. The Court held that (based on *Thomson*) the time spent in Canada was not "truly part of an ordered, customary, or general mode of life."

Based on the foregoing, provided that Mr. Walsh is either petitioned or assigned into bankruptcy on the basis of having property in Canada (as opposed to an determination that he resides in Canada) it seems unlikely that the single act of coming within the jurisdiction of the BIA would be a sufficient to make him a resident of Canada for the purposes of the ITA. In *Gupta* and *Erikson* owning a dwelling house in Canada, without more, was insufficient to indicate an intention to make Canada the taxpayer's residence.

(b) Other provisions of the ITA

Under Section 250 of the ITA, a person is deemed a resident of Canada in certain circumstances. However, none of these provisions deem a person a Canadian resident solely on the basis of either being petitioned or making an assignment in bankruptcy under the BIA. (The full text of section 250 is reproduced as Appendix A hereto.)

Under the ITA, "bankrupt" has the same meaning as in the BIA. In addition, section 128(2) of the ITA establishes several specific rules to deal with taxpayers who become bankrupt, some of which are reproduced as follows:

128. (2) Where an individual has become a bankrupt, the following rules are applicable:

(a) the trustee in bankruptcy shall be deemed to be the agent of the bankrupt for all purposes of this Act;

(b) the estate of the bankrupt shall be deemed not to be a trust or an estate for the purposes of this Act;

(c) the income and the taxable income of the individual for any taxation year during which the individual was a bankrupt and for any subsequent year shall be calculated as if

(i) the property of the bankrupt did not pass to and vest in the trustee in bankruptcy on the receiving order being made or the assignment filed but remained vested in the bankrupt, and

(ii) any dealing in the estate of the bankrupt or any act performed in the carrying on of the business of the bankrupt estate by the trustee was done as agent on behalf of the bankrupt and any income of the trustee from such dealing or carrying on is income of the bankrupt and not of the trustee;

Significantly, section 128(2)(b) provides that the estate of the bankrupt (although vested in the trustee under Bankruptcy Law) is not deemed a trust or estate for the purposes of the ITA. This

is significant because under the ITA, the residence of a trust is again a question of fact, but the CCRA will generally consider a trust to reside where the managing or controlling trustee resides: Interpretation Bulletin IT-447, "Residence of a trust or estate" (1980). Therefore, were it not for section 128(2)(b), arguably, filing in bankruptcy in Canada would vest the individual's property with a trustee and as such, the estate would be taxable on the basis of the Canadian residency of the trustee in bankruptcy.

Section 128(2)(c) goes on to provide that any income from the estate is income of the individual and not the trustee. Further, nothing else under section 128(2) would seem to automatically deem a bankrupt a resident of Canada. (The full text of section 128(2) is reproduced as Appendix B hereto.)

APPENDIX A

Income Tax Act, R.S.C. 1985, c. 1, section 128(2):

250.(1) For the purposes of this Act, a person shall, subject to subsection 250(2), be deemed to have been resident in Canada throughout a taxation year if the person

250.(1)(a) sojourned in Canada in the year for a period of, or periods the total of which is, 183 days or more;

250.(1)(b) was, at any time in the year, a member of the Canadian Forces;

250.(1)(c) was, at any time in the year,

(i) an ambassador, minister, high commissioner, officer or servant of Canada, or

(ii) an agent-general, officer or servant of a province,

and was resident in Canada immediately prior to appointment or employment by Canada or the province or received representation allowances in respect of the year;

250.(1)(d) performed services, at any time in the year, in a country other than Canada under a prescribed international development assistance program of the Government of Canada and was resident in Canada at any time in the 3 month period preceding the day on which those services commenced;

250.(1)(d.1) was, at any time in the year, a member of the overseas Canadian Forces school staff who filed his or her return for the year on the basis that the person was resident in Canada throughout the period during which the person was such a member;

250.(1)(e) (Repealed by S.C. 1999, c. 22, s. 82(1)).

250.(1)(f) was at any time in the year a child of, and dependent for support on, an individual to whom paragraph (b), (c), (d) or (d.1) applies and the person's income for the year did not exceed the amount used under paragraph (c) of the description of B in subsection 118(1) for the year;

250.(1)(g) was at any time in the year, under an agreement or a convention with one or more other countries that has the force of law in Canada, entitled to an exemption from an income tax otherwise payable in any of those countries in respect of income from any source (unless all or substantially all of the person's income from all sources was not so exempt), because at that time the person was related to or a member of the family of an individual (other than a trust) who was resident in Canada.

Idem

250.(2) Where at any time in a taxation year a person described in paragraph 250(1)(b), 250(1)(c) or 250(1)(d) ceases to be a person so described, or a person described in paragraph 250(1)(d.1) ceases to be a member of the overseas Canadian Forces school staff, that person shall be deemed to have been resident in Canada throughout the part of the year preceding that time and the spouse or common-law partner and child of that person who by reason of paragraph 250(1)(e) or 250(1)(f) would, but for this subsection, be deemed to have been resident in Canada throughout the year shall be deemed to have been resident in Canada throughout that part of the year.

Ordinarily resident

250.(3) In this Act, a reference to a person resident in Canada includes a person who was at the relevant time ordinarily resident in Canada.

Corporation deemed resident

250.(4) For the purposes of this Act, a corporation shall be deemed to have been resident in Canada throughout a taxation year if

250.(4)(a) in the case of a corporation incorporated after April 26, 1965, it was incorporated in Canada;

250.(4)(b) in the case of a corporation that

- (i) was incorporated before April 9, 1959,
- (ii) was, on June 18, 1971, a foreign business corporation (within the meaning of section 71 of the Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952, as it read in its application to the 1971 taxation year) that was controlled by a corporation resident in Canada,
- (iii) throughout the 10 year period ending on June 18, 1971, carried on business in any one particular country other than Canada, and
- (iv) during the period referred to in subparagraph 250(4)(b)(iii), paid dividends to its shareholders resident in Canada on which its shareholders paid tax to the government of the country referred to in that subparagraph,

it was incorporated in Canada and, at any time in the taxation year or at any time in any preceding taxation year commencing after 1971, it was resident in Canada or carried on business in Canada; and

250.(4)(c) in the case of a corporation incorporated before April 27, 1965 (other than a corporation to which subparagraphs 250(4)(b)(i) to 250(4)(b)(iv) apply), it was incorporated in Canada and, at any time in the taxation year or at any time in any preceding taxation year of the corporation ending after April 26, 1965, it was resident in Canada or carried on business in Canada.

Deemed non-resident

250.(5) Notwithstanding any other provision of this Act (other than paragraph 126(1.1)(a)), a person is deemed not to be resident in Canada at a time if, at that time, the person would, but for this subsection and any tax treaty, be resident in Canada for the purposes of this Act but is, under a tax treaty with another country, resident in the other country and not resident in Canada.

Continued corporation

250.(5.1) Where a corporation is at any time (in this subsection referred to as the "time of continuation") granted articles of continuance (or similar constitutional documents) in a particular jurisdiction, the corporation shall

250.(5.1)(a) for the purposes of applying this Act (other than subsection 250(4)) in respect of all times from the time of continuation until the time, if any, of continuation in a different jurisdiction, be deemed to have been incorporated in the particular jurisdiction and not to have been incorporated in any other jurisdiction; and

250.(5.1)(b) for the purpose of applying subsection 250(4) in respect of all times from the time of continuation until the time, if any, of continuation in a different jurisdiction, be deemed to have been incorporated in the particular jurisdiction at the time of continuation and not to have been incorporated in any other jurisdiction.

Residence of international shipping corporation

250.(6) For the purposes of this Act, a corporation that was incorporated or otherwise formed under the laws of a country other than Canada or of a state, province or other political subdivision of such a country shall be deemed to be resident in that country throughout a taxation year and not to be resident in Canada at any time in the year, where

250.(6)(a) the corporation

- (i) has as its principal business in the year the operation of ships that are used primarily in transporting passengers or goods in international traffic (determined on the assumption that the corporation is non-resident and that, except where paragraph (c) of the definition "international traffic" in subsection 248(1) applies, any port or other place on the Great Lakes or St. Lawrence River is in Canada), or
- (ii) holds throughout the year shares of one or more other corporations, each of which

- (A) is a subsidiary wholly-owned corporation of the corporation as defined by subsection 87(1.4), and
- (B) is deemed by this subsection to be resident in a country other than Canada throughout the year,

and at no time in the year is the total of the cost amounts to the corporation of all those shares less than 50% of the total of the cost amounts to it of all its property;

250.(6)(b) all or substantially all of the corporation's gross revenue for the year consists of

- (i) gross revenue from the operation of ships in transporting passengers or goods in that international traffic,
- (ii) dividends from one or more other corporations each of which

(A) is a subsidiary wholly-owned corporation of the corporation, as defined by subsection 87(1.4), and

(B) is deemed by this subsection to be resident in a country other than Canada throughout each of its taxation years that began after February 1991 and before the last time at which it paid any of those dividends, or

(iii) a combination of amounts described in subparagraph 250(6)(b)(i) or 250(6)(b)(ii); and

250.(6)(c) the corporation was not granted articles of continuance in Canada before the end of the year.

Residence of inter vivos trusts

250.(6.1) For the purposes of provisions of this Act that apply to a trust for a taxation year only where the trust has been resident in Canada throughout the year, where a particular trust ceases at any time to exist and the particular trust was resident in Canada immediately before that time, the particular trust is deemed to be resident in Canada throughout the period that begins at that time and ends at the end of the year.

Residence of a qualifying environmental trust

250.(7) For the purposes of this Act, where a trust resident in Canada would be a qualifying environmental trust at any time if it were resident at that time in the province in which the site to which the trust relates is situated, the trust is deemed to be resident at that time in that province and in no other province.

APPENDIX B

Income Tax Act, R.S.C. 1985, c. 1, section 128(2):

128.(2) Where an individual has become a bankrupt, the following rules are applicable:

128.(2)(a) the trustee in bankruptcy shall be deemed to be the agent of the bankrupt for all purposes of this Act;

128.(2)(b) the estate of the bankrupt shall be deemed not to be a trust or an estate for the purposes of this Act;

128.(2)(c) the income and the taxable income of the individual for any taxation year during which the individual was a bankrupt and for any subsequent year shall be calculated as if

- (i) the property of the bankrupt did not pass to and vest in the trustee in bankruptcy on the receiving order being made or the assignment filed but remained vested in the bankrupt, and
- (ii) any dealing in the estate of the bankrupt or any act performed in the carrying on of the business of the bankrupt estate by the trustee was done as agent on behalf of the bankrupt and any income of the trustee from such dealing or carrying on is income of the bankrupt and not of the trustee;

128.(2)(d) except for the purposes of subsections 146(1), 146.01(4) and 146.02(4) and Part X.1,

- (i) a taxation year of the individual is deemed to have begun at the beginning of the day on which the individual became a bankrupt, and
- (ii) the individual's last taxation year that began before that day is deemed to have ended immediately before that day;

128.(2)(d.1) where, by reason of paragraph 128(2)(d), a taxation year of the individual is not a calendar year,

- (i) paragraph 146(5)(b) shall, for the purpose of the application of subsection 146(5) to the taxation year, be read as follows:

"128(2)(b) the amount, if any, by which

- (i) the taxpayer's RRSP deduction limit for the particular calendar year in which the taxation year ends

exceeds

- (ii) the total of the amounts deducted under this subsection and subsection 128(5.1) in computing the taxpayer's income for any preceding taxation year that ends in the particular calendar year."

and

- (ii) paragraph 146(5.1)(b) shall, for the purpose of the application of subsection 146(5.1) to the taxation year, be read as follows:

"128(2)(b) the amount, if any, by which

- (i) the taxpayer's RRSP deduction limit for the particular calendar year in which the taxation year ends

exceeds

- (ii) the total of the amount deducted under subsection 128(5) in computing the taxpayer's income for the year and the amounts deducted under this subsection and subsection 128(5) in computing the taxpayer's income for any preceding taxation year that ends in the particular calendar year.";

128.(2)(d.2) where, by reason of paragraph 128(2)(d), the individual has two taxation years ending in a calendar year, each amount deducted in computing the individual's income for either of the taxation years shall be deemed, for the purposes of the definition "unused RRSP deduction room" in subsection 146(1) and Part X.1, to have been deducted in computing the individual's income for the calendar year;

128.(2)(e) where the individual was a bankrupt at any time in a calendar year the trustee shall, within 90 days from the end of the year, file a return with the Minister, in prescribed form, on behalf of the individual of the individual's income for any taxation year occurring in the calendar year computed as if

- (i) the only income of the individual for that taxation year was the income for the year, if any, arising from dealings in the estate of the bankrupt or acts performed in the carrying on of the business of the bankrupt by the trustee,
- (ii) in computing the individual's taxable income for that taxation year, no deduction were permitted by Division C, other than
 - (A) an amount under any of paragraphs 110(1)(d) to (d.3) and section 110.6 to the extent that the amount is in respect of an amount included in income under subparagraph (i) for that taxation year, and
 - (B) an amount under section 111 to the extent that the amount was in respect of a loss of the individual for any taxation year that ended before the individual was discharged absolutely from bankruptcy,
- (iii) in computing the individual's tax payable under this Part for that taxation year, no deduction were allowed
 - (A) under section 118, 118.2, 118.3, 118.5, 118.6, 118.8 or 118.9,
 - (B) under section 118.1 with respect to a gift made by the individual on or after the day the individual became bankrupt,
 - (B.1) under section 118.62 with respect to interest paid on or after the day on which the individual became bankrupt, and
 - (C) under subsection 127(5) with respect to an expenditure incurred or property acquired by the individual in any taxation year that ends after the individual was discharged absolutely from bankruptcy,

and the trustee is liable to pay any tax so determined for that taxation year;

128.(2)(f) notwithstanding paragraph 128(2)(e), the individual shall file a separate return of the individual's income for any taxation year during which the individual was a bankrupt, computed as if

- (i) the income required to be reported in respect of the year by the trustee under paragraph 128(2)(e) was not the income of the individual,
- (ii) in computing income, the individual was not entitled to deduct any loss sustained by the trustee in the year in dealing with the estate of the bankrupt or in carrying on the business of the bankrupt,
- (iii) in computing the individual's taxable income for the year, no amount were deductible under any of paragraphs 110(1)(d) to (d.3) and section 110.6 in respect of an amount included in income under subparagraph (e)(i), and no amount were deductible under section 111, and
- (iv) in computing the individual's tax payable under this Part for the year, no amount were deductible under
 - (A) section 118.1 in respect of a gift made before the day on which the individual became bankrupt,
 - (B) section 118.62 in respect of interest paid before the day on which the individual became bankrupt, or
 - (C) section 118.61 or 120.2 or subsection 127(5),

and the individual is liable to pay any tax so determined for that taxation year;

128.(2)(g) notwithstanding subparagraphs 128(2)(e)(ii) and 128(2)(e)(iii) and 128(2)(f)(iii) and 128(2)(f)(iv), where at any time an individual was discharged absolutely from bankruptcy,

- (i) in computing the individual's taxable income for any taxation year that ends after that time, no amount shall be deducted under section 111 in respect of losses for taxation years that ended before that time,
- (ii) in computing the individual's tax payable under this Part for any taxation year that ends after that time,

- (A) no amount shall be deducted under section 118.61 or 120.2 in respect of an amount for any taxation year that ended before that time,
 - (B) no amount shall be deducted under section 118.1 in respect of a gift made before the individual became bankrupt,
 - (B.1) no amount shall be deducted under section 118.62 in respect of interest paid before the day on which the individual became bankrupt, and
 - (C) no amount shall be deducted under subsection 127(5) in respect of an expenditure incurred or a property acquired by the individual in any taxation year that ended before that time, and
- (iii) the individual's unused tuition and education tax credits at the end of the last taxation year that ended before that time is deemed to be nil;

128.(2)(h) where, in a taxation year commencing after an order of discharge has been granted in respect of the individual, the trustee deals in the estate of the individual who was a bankrupt or performs any act in the carrying on of the business of the individual, paragraphs 128(2)(e), 128(2)(f) and 128(2)(g) shall apply as if the individual were a bankrupt in the year; and

128.(2)(i) the portion of the individual's non-capital loss for a particular taxation year in which paragraph 128(2)(e) applied in respect of the individual and any preceding taxation year that does not exceed the lesser of

- (i) the amount of the individual's allowable business investment losses for the particular taxation year, and
- (ii) any portion of the individual's non-capital loss for that particular year that was not deducted in computing the individual's taxable income for any taxation year in which paragraph 128(2)(e) applied in respect of the individual or any preceding taxation year,

shall, for the purpose of determining the individual's cumulative gains limit under section 110.6 for taxation years following the taxation year in which paragraph 128(2)(e) was last applicable in respect of the individual, be deemed not to have been an allowable business investment loss.

RESEARCH PLAN

File #: 49605-1

Client/Matter: Tercon Contractors Ltd. / Tax Appeal Date: August 6, 2003

1. TEXTS, TREATISES AND LOOSELEAF SERVICES		
Author, Title, Citation		Current to /mm/yy
Houlden & Morawetz, <i>Bankruptcy and Insolvency Law of Canada</i> , 3 rd ed., looseleaf		2003 – release 7.
Hogg, et al. <i>Principles of Canadian Income Tax Law</i> , 4 th ed.		2002
Grover & Iacobucci, <i>Materials on Canadian Income Tax</i> , 6 th ed		1985
<i>Income Taxation in Canada</i> , looseleaf (Prentice Hall)		1994
<i>Bennett on bankruptcy</i> [7th ed.] / by Frank Bennett.		2002
Yelle, <i>Income Tax References</i> , vol. 3 (1994 - present)		2002
Minutes of Proceedings of the Standing Committee on Industry (Government of Canada), Issue No. 2 (Meetings Nos. 10 to 25)		
Atlas, <i>Canadian Taxation of Non-Residents</i>		1995
2. MARITIME LAW BOOK	Subject Headings & Key Numbers	Current to /mm/yy
	Title: Bankruptcy Title: Income Tax – Persons Liable – Residence of Taxpayer (Topic 205)	
3. BENNETT JONES MEMO BANK	Subject/Topics/Checked or Searches Done	Current to /mm/yy
	income tax residence bankruptcy	

4. ENCYCLOPEDIAS AND DIGESTS	Subject/Topics/Checked or Searches Done	Current to /mm/yy
4.1 C.E.D. (Ontario 3rd) / C.E.D. (Western 3rd)	Title Bankruptcy and Insolvency – Insolvent Persons; Jurisdiction of Courts; Petition; Assignment Income Tax – Residence Conflict of laws - Banruptcy	
4.2 Canadian Abridgment - Case Digests	Bankruptcy – Bankruptcy and Insolvency Jurisdiction – Persons Subject to bankruptcy laws Income Tax – Residence in Canada – Individuals – General Income Tax – Special Rules – Bankruptcy	
5. PERIODICALS/JOURNALS	Subject/Topics/Checked or Searches Done	Current to /mm/yy
5.1 InConference CD		
5.2 <i>Index to Canadian Legal Periodicals on QL</i>	Subject: Bankruptcy and Foreign Subject: tax and residence	
5.3 <i>Topical Commentary</i> global database on QL	see QL searches below	
5.4 <i>Journals (JOUR) on QL</i>	Title: Bankruptcy	
5.5 Other Periodicals in BJ Library	Canadian Tax Reporter Osgood Law Journal – Symposium on Consumer Bankruptcy (1990)	
6. STATUTES, ANNOTATED STATUTES, STATUTE CONSOLIDATIONS, HISTORY OF ACTS		Current to /mm/yy
Other Jurisdictions - Canada		
Houlden & Morawetz, The Annotated Bankruptcy and Insolvency Act 2003		
Statutes of Canada Judicially Considered	Bankruptcy and Insolvency Act	
Stikeman's Annotated Income Tax Act, 33 rd et., 2003		

1925

7. QL SYSTEMS SEARCHES	Subject/Topics/Checked or Searches Done	Current to /mm/yy
TAXQ . CJ ILPA INVQ	residen! /P bankrupt! non-resident /p bankrupt! foreign /p debtor "non-resident" /p bankruptcy insolvent /l person (too broad) non-resident foreign FOREIGN NON-RESIDENT /p debtor insolvent & bankruptcy	
8. WEBSITES	Subject/Topics/Checked or Searches Done	Current to /min/yy
http://www.parl.gc.ca/common/	Searched Hansard, Committees, etc. for reference to bill C-5 (i.e. references to amendments to BIA)	

*Glenn Walsh to
Tara Audit...*

Butalia, Jas

From: Butalia, Jas
Sent: Monday, December 01, 2003 9:39 AM
To: 'Dave Horne', Curtis Stewart, Chris Simard, Butalia, Jas
Subject: RE Glenn's Return


Curtis, please do give me a call on this one. I will be available after 1000 hrs. Thanks.

BDO Dunwoody LLP,

per: Jas Butalia, B.Sc, CA, TEP.

Direct: 403-531-0535
Main: 403-266-5608
Fax: 403-233-7833
Mobile: 403-874-6833
E-mail: jbutalia@bdo.ca

This is Exhibit " 23 "referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY, 2012


A Commissioner for Taking Affidavits
for British Columbia

-----Original Message-----
From: Dave Horne [mailto:Dave@tercon.bc.ca]
Sent: Monday, December 01, 2003 9:29 AM
To: Curtis Stewart; Chris Simard; Jas Butalia
Subject: Glenn's Return

Glenn would like to return to Canada. I think he has resigned himself to the likelihood that he will become personally bankrupt. If this is the case, what difference does it make if he comes back now or at the point that he becomes bankrupt.

Settlement with CCRA

Subject: settlement with CCRA

Date: Thu, 18 Dec 2003 16:26:48 -0800

From: "Nitikman, Joel" <Joel.Nitikman@fmc-law.com>

To: "jbutalia@bdo.ca" <jbutalia@bdo.ca>, "Boyle, Patrick" <Patrick.Boyle@fmc-law.com>, "Dave@tercon.bc.ca" <Dave@tercon.bc.ca>, "springpoint@hotmail.com" <springpoint@hotmail.com>, "ledoinves@aol.com" <ledoinves@aol.com>, "towerpower30@hotmail.com" <towerpower30@hotmail.com>, "d.grant@omni-lite.com" <d.grant@omni-lite.com>

CC: "stewartc@bennettjones.ca" <stewartc@bennettjones.ca>

I have received a very short letter from the CCRA, which I will fax to you tomorrow, stating that our settlement offer has been rejected. No reasons are given but I was told in a phone call from the CCRA that they did not wish to settle merely because of the threat that they would not collect anything from non-residents. While that was a small portion of our pitch to the CCRA it was not the major part of it--the main part was that there were wrong on the merits.

I will soon be receiving notices of confirmation from the CCRA. We will then have 90 days either to file an appeal with the Tax Court of Canada or drop the case. I will be in touch with each of the clients to get their instructions once I receive the confirmations.


Yours Truly
Joel A. Nitikman
Partner

Fraser Milner Casgrain, LLP
1500-1040 West Georgia Street
Vancouver, BC V6E 4H8
direct: (604) 443-7115
cell: (604) 805-7114
fax: (604) 683-5214

This is Exhibit " 24 " referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY, 20 12

A Commissioner for Taking Affidavits
for British Columbia

This is Exhibit " 25 "referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY, 20 12


A Commissioner for Taking Affidavits
for British Columbia

Coombs & Kauloops ticket funds

= Horizon - pre pay tickets

= if \$2000 to be spent (Hue) - pre-buy

(Horizon to anywhere - Alaska)

= Travel Agent - - - 2 years out.

Hank - kid says yes - if 1/2 on patent

- price goes both ways

- Melhoff - ? Can't reach -

Ken Jenner → Donna's husband - West Fraser Europe

Gibraltar, Polley

Kendra - 14 Nov.

1/2 way to Hasefly.

foreman - rem owned at

(didn't go)

planner - union - Sawant is non.

Douglas Mann - Marvin Lunders died -

1978 Oct

KRM

AS - B. Pappay - need advice - offshore, Sus. in Canada

directorships - - - CIPORS

- finality - reciprocity w/US? - poss no

- if B. Pappay - some offshore? - prob. can come home

- discharge? - how min union rules if not discharged (3000/yr)

- still no advice

- Hunter - drive option - part of bankruptcy issue

† Sue - 3129 Yukon St. Vancouver V5Y 3R6

† Bert - 5955 Purje Rd V2C 5V4 (573-4630)

† Hank -

↳ Parsons - 2 trucks + drill.

- dredging - Bob Johnson - open to calls & expecting to hear from us.

- JF chip - OK

- Jenner bond - need to shake up Co's - keep N/A out (opt'd)

From: "Butalia, Jas" <jbutalia@bdo.ca>
To: "Curtis Stewart (stewartc@bennettjones.ca)" <stewartc@bennettjones.ca>, "Chris Simard (simardc@bennettjones.ca)" <simardc@bennettjones.ca>
Date: 2/19/04 11:53AM
Subject: Glenn Walsh

Guys, I hope all is well with you.

We need to get some answers to Glenn by next Friday in regards to the planning if he is to go into bankruptcy. He has just the one asset in Canada in his name. We need to talk about getting Glenn the answers that he needs. Just for the record, the answers he would like are to the points noted, so that he can understand the consequences of his bankruptcy on:

- * Directorships in Canada;
- * Once he is a director & he distributes funds that the current directors are holding for withholding tax on management fees paid to Apex, will there be a personal liability attached to the previous directors? *Curtis reviewing*
- * Sale of the Thompson lots & the funds that are received from that sale after the creditors are paid off; →
- * Should Jean Walsh, his ex-wife, increase the mortgage that she has as security(!!); ? *underlying debt.*
- * Can we wind-up the foreign trusts that he is a beneficiary in? & }
- * If he is bankrupt, can he carry on business in Canada, in the US, other countries? }

Since I am gone on March 1 for 5 weeks, I would like to get this process started next week & hopefully we can set a date by which the answers can be provided to him. My suggestion is that you can respond by e-mail for a time for a conference call between us 3 next week, & I can then let you know when I would be available as I will be at my son's store most of next week & do not intend to be in the office, unless I am required to be for items such as this one. Thanks.


Regards.

J. Butalia Professional Corporation,
 Consulting to BDO Dunwoody LLP,

per: Jas Butalia, B.Sc., CA, TEP.

Direct line: 403-531-0535
 Main line: 403-266-5608
 Cell phone: 403-874-6833
 Fax: 403-233-7833
 E-mail: jbutalia@bdo.ca

This is Exhibit " 26 "referred to
 in the Affidavit of GLENN
WALSH sworn before me
 this 3 day of JULY, 20 12


 A Commissioner for Taking Affidavits
 for British Columbia

From: Curtis Stewart
To: "Butalia, Jas" <jbutalia@bdo.ca>; Dave Horne <Dave@tercon.bc.ca>;
 glenn@tercon.bc.ca; mack@macklawcorp.com
Date: 2/24/04 11:57AM
Subject: Tercon/Walsh issues

Chris Simard and I are reviewing several issues in anticipation of a response from the CCRA on their position on the Tercon, Elbee, Conex reassessments. As you will recall the CCRA (after our meeting in late November) referred these matters to the Department of Justice for opinions on several of the outstanding issues. Based on conversation with the CCRA in the last several weeks I anticipate we may have a response this week or next.

We are reviewing a host of issues, including:

- Directorship issues. Can Glenn be a director in Canada if he goes bankrupt, as well as the recent issue we discussed as to the potential liability of past directors if funds held in trust (for withholding requirements) are distributed by a new director
- Sale of the Thompson lots (as it relates to potential bankruptcy)
- Mortgage issues (Jean) and whether the mortgage can be increased (as it relates to potential bankruptcy)
- Feasibility of winding up foreign trusts
- carrying on business in Canada (as it relates to potential bankruptcy)
- strategies on CCRA appeals (which depends on the opinions the CCRA receives from the Department of Justice)

Many of these issues have already been addressed in previous discussions and memorandums but it is prudent to revisit and discuss each of these issues in the context of the CCRA response on the companies appeals (being mindful that they rejected the offer made by the other taxpayers who have similar reassessments as Glenn).


I am proposing to provide a brief "executive summary" memo for everyone's review by the middle of next week (as we should have the CCRA response by then) and then set up a conference call to discuss. A conference call for Thursday March 5 or Monday or Tuesday of the following week would be desirable. Can Dave, Mack and Glenn let me know availability. Jas will be out of the country but Chris and I spoke with him today to discuss these matters and to focus the necessary inquiries.

Thanks.

Curtis R. Stewart
 Bennett Jones LLP
 stewartc@bennettjones.ca

CC: Chris Simard

This is Exhibit " 27. "referred to
 in the Affidavit of GLENN
WALSH sworn before me
 this 3 day of JULY, 2012


 A Commissioner for Taking Affidavits
 for British Columbia



FACSIMILE TRANSMITTAL

TO (Company): Bennett Jones
CITY: _____
ATTENTION: CURTIS STEWART
FAX NO. 403 - 265 - 7219

FROM: Dave Hoare
DATE: March 17/04
NO. OF PAGES: 2
(Inclusive)

MESSAGE

This is Exhibit " 28 "referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY, 20 12

[Signature]
A Commissioner for Taking Affidavits
for British Columbia

100, 2079 Falcon Road
Kamloops, B.C. V2C 4J2
Phone: (250) 372-0922
Fax: (250) 372-1555

General Industrial, Mining and Excavation Contractors

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MEMORANDUM

To: Curtis Stewart
CC: Mack Smith, Jas Butalia
DATE: March 17, 2004
FROM: Dave Horne
RE: Conference call March 15, 2004


With the possibility of Glenn returning to Canada and/or the possibility of Glenn becoming bankrupt there becomes the issue of minimizing the payment of tax. In contemplation of the above I have the following questions.

1. If Glenn returns to Canada (a resident of Canada for tax purposes), can Conex still pay a management fee to Apex? *Yes.*
2. Will Apex by virtue of Glenn being here "full time" be seen as having an office here? *Yes.*
3. If Apex has an office here will Apex pay Canadian tax and at what rate? *Yes.*
4. If Apex is deemed to have an office in Canada and Conex pays a management fee to Apex, what is the withholding tax rate if any? *15%*
5. What effect will this have on the 10% funds already placed in trust? Will there still be a requirement to place the 10% in trust? *No.*
6. If Glenn returns to Canada and it is decided not to pay a management fee to Apex, then do we have a plan that will continue to minimize the tax payable by Conex? *None*
7. Assume Glenn becomes a Canadian resident and the management fees are paid directly to him instead of Apex. If a large management fee paid to Glenn by Conex remains payable in the form of a loan, can CCRA demand payment if Glenn subsequently becomes bankrupt?
8. Can Apex provide the services of Glenn (assuming Glenn is bankrupt) without Glenn being paid? How does this affect the deductibility of the management fee by Conex? *Apex cannot.*
9. What is the effect on Glenn's estate should he become bankrupt and die (assuming CCRA has a judgment against him)? *}*



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This is Exhibit " 29 " referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY, 2012


A Commissioner for Taking Affidavits
for British Columbia

MEMORANDUM

SUBJECT TO SOLICITOR-CLIENT PRIVILEGE

TO: Jas Butalia, BDO Dunwoody LLP FILE NO.: 49605-1
Dave Horne, Tercon
Mack Smith
Glenn Walsh

FROM: Curtis Stewart LOCAL: 403.298.4485
Chris Simard

DATE: March 11, 2004

CLIENT: Tercon Contractors Ltd.

RE: Assets of Glenn Walsh and Bankruptcy Issues

ISSUES

You have asked that we answer the following questions:

1. How would a personal bankruptcy of Glenn Walsh affect the following:
 - (a) his ability to hold directorships of Canadian businesses;
 - (b) his ability to carry on business in Canada, the U.S., or other countries;
 - (c) the assets formerly held in the Family Trust or the Guernsey Trust, if those trusts are wound up and the assets vest in Mr. Walsh, prior to the bankruptcy; and
2. Can Mr. Walsh increase the amount of the mortgage security on the house he owns in Kamloops (his only asset in Canada)?

DISCUSSION

1(a) How would a personal bankruptcy of Glenn Walsh affect his ability to hold directorships of Canadian businesses?

Mr. Walsh would be prohibited from acting as the director of a company located in Canada. Please see the Research Memorandum of Jakub Ksiazek, attached, for a full discussion.

1(b) How would a personal bankruptcy of Glenn Walsh affect his ability to carry on business in Canada, the U.S., or other countries.

The situation in Canada is relatively clear. Pursuant to s. 199 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, (the "BIA"), any undischarged bankrupt engaging in trade

or business or obtaining credit for an amount of \$500 or more, must disclose to the persons with whom he is entering those transactions that he is an undischarged bankrupt. Failure to do so is an offence under the BIA punishable by a fine of up to \$5,000 or imprisonment up to one year, or both. Thus, there is no prohibition on continuing to do business, but rather the bankrupt must disclose his state of bankruptcy to all those persons with whom he does business.

While there is no prohibition on doing business, there is a more fundamental difficulty, if the bankrupt does so. The bankrupt does have the capacity to deal with property acquired after the bankruptcy and he can deliver good title to such property to a purchaser, but only if the transaction is completed before the Trustee intervenes. Thus, essentially, the bankrupt can acquire and dispose of property validly unless and until the Trustee learns about such property and intervenes to take possession of it. If the Trustee does so, the property vests in him. Thus, potentially, a Trustee could make investigations about a bankrupt's dealings and capture any property when the bankrupt gains an interest in it, and prior to selling it.

Thus, it is fairly clear that there are some relatively serious impediments to an undischarged bankrupt continuing to carry on business in Canada. The situation is less clear with respect to business dealings in the United States or other jurisdictions outside Canada. Generally, the law in all common law jurisdictions (such as the United States, Canada and the United Kingdom) holds that the legal determination of an individual's status (such as their status as a bankrupt) is to be determined by the law of the person's domicile. There is a partial exception to this rule under English and Canadian law, namely that a person's status existing under foreign law will not be recognized if it is "penal" in nature. Generally, bankruptcy legislation is considered to be penal in nature. Therefore, it is unlikely that an undischarged Canadian bankrupt would be considered to be a bankrupt in another common law jurisdiction. However, it can be anticipated that some practical difficulties would be encountered by an undischarged bankrupt in doing business in other jurisdictions. Also, it should be noted that under the BIA, all of a bankrupt's assets, no matter where they are located in the world, vest in the Canadian trustee in bankruptcy.

The most problematic aspect of a personal bankruptcy filing in the circumstances facing Mr. Walsh is that CCRA will, without doubt, oppose any application by Mr. Walsh for a discharge from bankruptcy. Usually, the court is very sympathetic to the argument that a person should not be discharged from bankruptcy if they owe a large tax debt. It is quite possible that, given the magnitude of Mr. Walsh's potential tax liability, he would never be discharged from bankruptcy, until most or all of the tax judgment was paid.

1(c) How would a personal bankruptcy of Glenn Walsh affect the assets formerly held in the Family Trust or the Guernsey Trust if those trusts are wound up and those assets vest in Mr. Walsh, prior to the bankruptcy?

Upon a bankruptcy, all of Mr. Walsh's then-existing property, worldwide, would automatically vest in his trustee in bankruptcy, and Mr. Walsh would cease to have any capacity to dispose of or otherwise deal with his property: s. 71(2) of the BIA. This would include all the property previously distributed to Mr. Walsh from the Family Trust or the Guernsey Trust.

2. Can Mr. Walsh increase the amount of mortgage security on the house he owns in Kamloops?

Generally speaking, the granting of security in the absence of any actual new advance of loan monies, is a fraudulent preference. Thus, if Mr. Walsh simply agreed with his former wife that the amount of the mortgage on the house should be increased or a second mortgage should be granted, without an actual loan being made, the transaction would easily be set aside upon subsequent attack. If, on the other hand, a second mortgage or a further mortgage was granted in consideration for and as security for an actual advance of funds, the transaction could not be easily set aside.

Please advise if you would like any of these questions answered in further detail, or whether you have any further questions.

From: Curtis Stewart
 To: dave@tercon.bc.ca; jbutalia@bdo.ca; Mack@macklawcorp.com
 Date: 17/05/2006 8:29:05 AM
 Subject: Timetable for CRA matters

To give everyone an update/heads up on the timetable of upcoming events over the next several months on the various matters please be aware of the following:

- CONEX/ELBEE/TERCON CONTRACTORS Tax Court matters
- by June 30 completion of Examinations for Discovery (Court Ordered)
 - we are tentatively looking to reconvene the discoveries the week of June 12
- August 15 advise Tax Court whether case will settle or whether Pretrial date or trial date should be set

GLENN WALSH Tax Court matters

- List of documents filed April 30 (Court Ordered)
- September 29 conference with Justice Woods of Tax Court to discuss case management of appeal

The Tax Court dates above were set to take into account the following factors:

- Target a Tax Court trial on Conex/Elbee and Tercon for the fall so a decision can be obtained in 2006.
- not request trial date until after week of August 8 as this is when the Kitsch/Tower trials are set for. This will allow a better read on any addition issues or strategies to be taken into account for a Tax Court trial on Conex/Elbee and Tercon
- have Glenn's matter progress but not conduct Examinations for discovery until after the Kitsch/Tower trial. The Crown is of the view they may win Kitsch/Tower on the issue of residency. We will want to determine the Court's views on both residency and the Departure Trade itself in order to best chart our strategy on lenn's matter.

In addition to the Tax Court matters we are dealing with the issues of management fees, which are under objection, as well the CRA recently issued a proposal letter to Glenn on the issue of residency and has indicated they are reviewing the issue of whether Apex may have a permanent establishment in Canada. These are all issues we have been aware may be raised at some point and needless to say they are extremely intertwined. I raised a couple of weeks ago whether the CRA would be prepared to meet with me to discuss their position on these additional matters in detail. I told Val Burgart that I would like a meeting to include anyone from Ottawa or elsewhere who was involved at a higher level in the decisions the CRA was making.

The CRA has indicated they are agreeable to such a meeting. We have been exchanging dates when their people would be available. At present it looks like June 8th may work (subject to some confirmation from a couple CRA people).


If the meeting is set for the 8th of June we will want to meet or talk prior to then to discuss the issues and wheer we might want to steer the CRA. I have canvassed loosely Jas, Dave and Mack about some dates but wanted to hear back from the CRA first. We need to check with Glenn to see how the week of the 5th looks for him.

I expect these meetings would be quite productive to get a better read on the CRA positions, how strong they feel about them and which positions they may be prepared to compromise on.

Can one of you see this update finds its way to Glenn Walsh. I will email when I hear back on firm dates from CRA.

Curtis R. Stewart
 Bennett Jones LLP
 stewartc@bennettjones.ca

This is Exhibit " 30 "referred to
 in the Affidavit of GLENN
WALSH sworn before me
 this 3 day of JULY, 2012


 A Commissioner for Taking Affidavits
 for British Columbia

Butalia, Jas

*Glenn Walsh re
Malta*

From: Glenn Walsh [glennapex@yahoo.com]
To: Curtis Stewart; Butalia, Jas; Mack Smith
Cc:
Subject: My Lifestyle, or lack thereof
Attachments:

Sent: Fri 11/3/2006 3:23 PM

Hi, Fellows

I would like to be able to make some decisions regarding my offshore status, as to whether I have anything to gain by maintaining it, whether the trusts in 3 countries are still necessary, whether US residency, if not Canadian, would impact me, or would residency in another jurisdiction make any sense.

I need some definitive advice about the various options, recognizing that we have potentially 3 solutions(win, lose, or negotiate a settlement) in 2 entities(personal and corporate), and the answers could be different for each.

I am aware that some of the problems that we recently discussed in Kamloops will impact some of my options, but what are they? We essentially have two different situations, I believe-back taxes, And potential future(I hope) taxes, and possibly each leads to different residency possibilities going forward You collectively, possibly with some details from Dave, know all of the details about my situation, and the likely future remittances from the various entities. It may be that profit/income distributions from the likes of Construction, Equipment, Industrial, Developments, Tag, Emcon, Carmacks, AC&T, Juniper(youknow of the huge sale I turned down a few months ago), Fraser Bay, Zeballos, and others lead to different conclusions and advice, but I need to put it in perspective. Possibly the forms of remittance can be changed in some cases in order to allow me more choices of residence? We have consulting fees, management fees, dividends, and repayment of shareholder loans all probably leading to different conclusions, but maybe we can take some different forms of payment for some? If I can't move back to Canada, would US residency attract tax liability in all cases and could we somehow insulate against some or all? Resuming Canadian residency is the preference.

There are likely a lot of scenarios to consider here, but what are my options? And when might I make various moves, bearing in mind the pending tax court events in Jan/Feb and July/Aug?

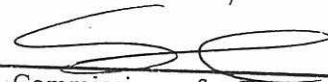
As you know, we live like animals on the run,with--no home,life as renters in hellholes like Malta and Mexico, most of our clothes and belongings stashed in storage lockers, no ability to properly manage my many businesses(at huge financial loss), no ability to enjoy whatever I may have, and all at a cost of hundreds of dollars/year. After 7 years, it is time to get off this terdmill, so please tell me what options might be out there and what the timing would be. I went into this expecting a couple years of disruption. On another matter, do we have dates for my discovery while in the US/Canada between Dec 7 and Dec 19?

Help! Glenn

Glenn Walsh, cell 206-465-3414

Everyone is raving about the all-new Yahoo! Mail.

This is Exhibit " 31 "referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY, 20 12


A Commissioner for Taking Affidavits
for British Columbia

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BDO Dunwoody LLP
Chartered Accountants
and Advisors

1900, 801 - 6 Avenue S W
Calgary Alberta Canada T2P 3W2
Telephone: (403) 266-5608
Fax: (403) 233-7833
www.bdo.ca

MEMORANDUM

To: Mr. Glenn Walsh


Date: August 15, 2007

From: Jas Butalia of J. Butalia Professional Corporation,
Corporate Consultant to BDO Dunwoody LLP, Calgary, AB

cc: Messrs. Mack Smith and Dave Horne

Re: Tax Losses and Deductions from the 1998 Departure Strategy ("the Strategy")

This is Exhibit " 32 "referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY, 2007


A Commissioner for Taking Affidavits
for British Columbia

Glenn, attached to this memo is the e-mail that I sent Dave Horne on September 26, 2002 in respect of the tax deductions from the Strategy. The loss shown on the memo of September 26, 2002 includes the loss on the Braich loan, as correctly pointed out by you, and also overstatement for the EPSPs paid to you. These two items result in the actual loss from the Strategy to be accounted for being:

Loss per the memo of September 26, 2002	\$50,331,000
Less: Braich loss included in the above	<u>2,821,700</u>
Loss from the Strategy to be accounted for	<u>\$47,509,300</u>

Thus, there is a total of \$48 million that was used in the form of deductions, and other than a certain amount noted herein that was used for stepping up the cost of the equipment, all of the loss from the Strategy was used as a deduction against personal income from the prior years, and for capital gains on the preferred shares of Conex Services Inc ("Conex") that were owned by you and for those that were acquired by you from Jean in 1998.

The analysis of the use of the deductions, subject to the eventual success on defending the CRA reassessments, is as follows:

1. the Class C preferred shares of Conex that were owned by Jean initially were acquired from Jean at a cost of \$1. Those shares and the same Class C shares that were owned by you had a total fair market value ("FMV") of \$2,522,000. Thus, 75% of the gain would have been taxed in your hands on your departure, and that taxable portion amounting to \$1,891,500, rounded out for this purpose as \$1,892,000. Thus, the \$1,892,000 of the deductions is embedded in the Class C preferred shares of Conex, and these shares now have a cost and FMV of \$2,522,000. If you were to sell these shares to anyone other than to Conex, the \$2,522,000 received by you would not be subject to tax since the cost and the price you get for the shares would be the same. This means that the \$1,892,000 of deductions is not used at the corporate level, and thus, there is no effect of this deduction on any of the corporations that are part of the current, proposed sale to Dumas. This \$1,892,000 is to be utilized by you personally when and if the Class C preferred shares of Conex are sold by you;
2. there was a Commodity Business in your personal name that had rolled forward profits of \$5,153,000 from prior years. On the termination of the Commodity Business, these profits were sheltered by the deductions from the Strategy. Thus, \$5,153,000 of the deductions have been used to shelter income that was earned prior to 1998;



- 3. on your departure, the FMV of the Falcon shares was stated by us to be \$10,000,000 in the basis that there was no valuation available for these shares on your departure. Thus, as a precaution, rather than understate the gain on these shares, the tax return for 1998 showed that you realized a gain of approximately \$9,992,000, the taxable portion being \$7,494,000. Thus, \$7,494,000, i.e. rounded to \$7,500,000 of the deductions from the Strategy was used against the potential from the Falcon gain, i.e. used personally and it has no effect at a corporate level. When the CRA reassessed for the 1998 year, they have left the gain in place, even though they do not accept the Strategy and the deductions created by the Strategy. Thus, as part of the final Appeal, it is possible that the use of the \$7,500,000 of deductions could be reversed. If that were to happen, you would have an unused deduction, i.e. a loss carry forward available personally in Canada of \$7,500,000 for use against Canadian source income. Thus, this potential loss of \$7,500,000 exists in your personal hands and has no effect on the corporate group that is proposed for sale to Dumas;
- 4. in 1998, the equipment was sold by Tercon Contractors Ltd ("TCL") to Tercon Services Ltd ("TSL"), as part of the Strategy. The recapture and the gain on the equipment was \$8,382,000, and this taxable income was not taxed in TCL as TCL paid you an Employee Profit Sharing Plan ("EPSP") allocation that included this otherwise taxable income. The result was that \$8,382,000 of the deductions is embedded in the corporate equipment that is currently owned by Tercon Equipment Ltd ("TEL"). TEL is part of the corporate group that is currently being proposed for the sale to Dumas;
- 5. in addition, TCL had profits in the 1998 year that was paid out to you in the form of EPSP. The total EPSP from TCL in 1998 to you was \$24,390,000, and thus, the profits in 1998 from all the operations of TCL were approximately \$16,008,000. That profit consisted of not only the profits from the 1998 operations, but also the jobs from prior years that were completed in 1998. Thus, another \$16,008,000 of the deductions from the Strategy were used by you personally, and these deductions are not embedded in the corporate group that is part of the proposed sale to Dumas;
- 6. in 1998, you were allocated EPSPs of \$5,463,531 from other corporations in the corporate group. Thus, this \$5,463,531 was sheltered personally by the deductions from the Strategy; and
- 7. lastly, without any adjustment for the taxable portion of the capital gain on the Falcon shares noted in Item # 3 herein, there is a loss carry forward from 1998 of \$5,935,000, of which \$2,821,700 is the Braich loss. Thus, the loss from the Strategy that was available was \$3,113,300. This loss carry forward was available for you to use against any income earned by you from Canadian sources. However, because of the CRA litigation, and the 3rd party claims by the CRA, there has been no income of any significant amount paid to you. If the Falcon taxable capital gain shown in item # 3 is eliminated, the loss claimed against that gain will be added to the loss carried forward of \$3,113,300, and the total personal loss available from the Strategy will be \$3,113,300 plus \$7,500,000, i.e. a total of \$10,613,300.

The loss carry forward of \$3,113,300 or \$10,613,300 is available against income that is assessed to you until 2005.

The summary of the above is that the deductions that were created from the Strategy have been used as follows (all rounded amounts):



- Personally, other than the loss carry forward

-Item # 1	\$1,892,000
-Item # 2	5,153,000
-Item # 3	7,500,000
-Item # 5	16,008,000
-Item # 6	<u>5,463,000</u>
Total without loss carry forward	\$36,016,000
-Item # 7	<u>3,113,000</u>
Total at the personal level	\$39,129,000

- Corporate

-Item # 4	<u>8,382,000</u>
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Total, as per attached memo of September 2002 \$47,511,000

It should be noted that this memo does not take into account the amount of the step-up in Item # 4 that has been utilized on the sale, trade-in or any other form of disposition of equipment after 1998. Thus, the memo can not confirm the amount of the step-up that is being passed on to Dumas in the proposed sale.

I hope this memo is self-explanatory.

Regards,

Jas Butalia, B.Sc., CA., TEP
 J. Butalia Professional Corporation
 Corporate Consultant to BDO Dunwoody LLP

This is Exhibit " 33 "referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY, 2012



A Commissioner for Taking Affidavits
for British Columbia



MEMORANDUM

PRIVILEGED & CONFIDENTIAL

TO: File FILE NO.: 49605-1
 FROM: Curtis R. Stewart LOCAL: 403.298.3074
 DATE: February 6, 2008
 RE: Summary of Glenn Walsh/Tercon Group Tax

This memorandum addresses the status of the various ongoing tax issues of Glenn Walsh/Tercon Group and potential settlement options and issues arising therefrom.

The major issues in dispute can be categorized as follows:

1. EPSP Issues/Part of Departure Strategy

- (i) Tercon Contractors Ltd. – taxation years 1997, 1998 and 1999 (under Appeal)

EPSP Amount	1997	\$ 2,334,200
	1998	\$24,540,000
Amount Due as at April 15/02	Tax	\$12,000,000
	Interest	\$ 4,290,000
	Penalty	\$ 30,000
	Total	\$16,391,702

AMOUNT PAID ON ACCOUNT \$ 775,551
Estimate of interest to December 31/07 \$ 5,948,661

- (ii) Elbee Development Corp. – taxation year 1998 (under Appeal)

EPSP Amount	1998	\$ 2,830,000
Amount Due as at May 30/02	Tax	\$ 1,263,248
	Interest	\$ 478,000
	Total	\$ 1,741,332

AMOUNT PAID ON ACCOUNT \$ 0
Estimate of Interest to December 31/07 \$ 650,822

- (iii) Conex Services Inc. – taxation year 1998 (under Appeal)

EPSP Amount		\$ 1,375,000
Amount Due as at August 9/02	Tax	\$ 625,948
	Interest	\$ 241,856
	Penalty	\$ 31,297
	Total	\$ 899,219
AMOUNT PAID ON ACCOUNT		\$ 450,000
Estimates of interest are calculated at a 6.5% per annum amount		\$ 160,875

2. GLENN WALSH Issues/Departure Trade/Non-Residency

(i) Department Trade Issues – taxation year 1998 (under Appeal)

Taxable capital gain on disposition of Falcon Shares	\$ 28,596,224
Carrying charges	\$ 47,499,148

Amounts owing as at October 10, 2002

Tax	\$33,368,748
Interest	\$11,883,396

Total	\$45,252,126
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Estimate of Interest to December 31/07	\$15,442,287
--	--------------

(ii) Residency Issues – taxation year 1999 + (under objection)

Management Fees [via Apex]	\$2,017,000
Falcon Share Redemption	\$52,842,700

Amounts owing as at May 11, 2006

Tax	\$28,750,181
Interest	\$17,048,374
Total	\$45,798,555

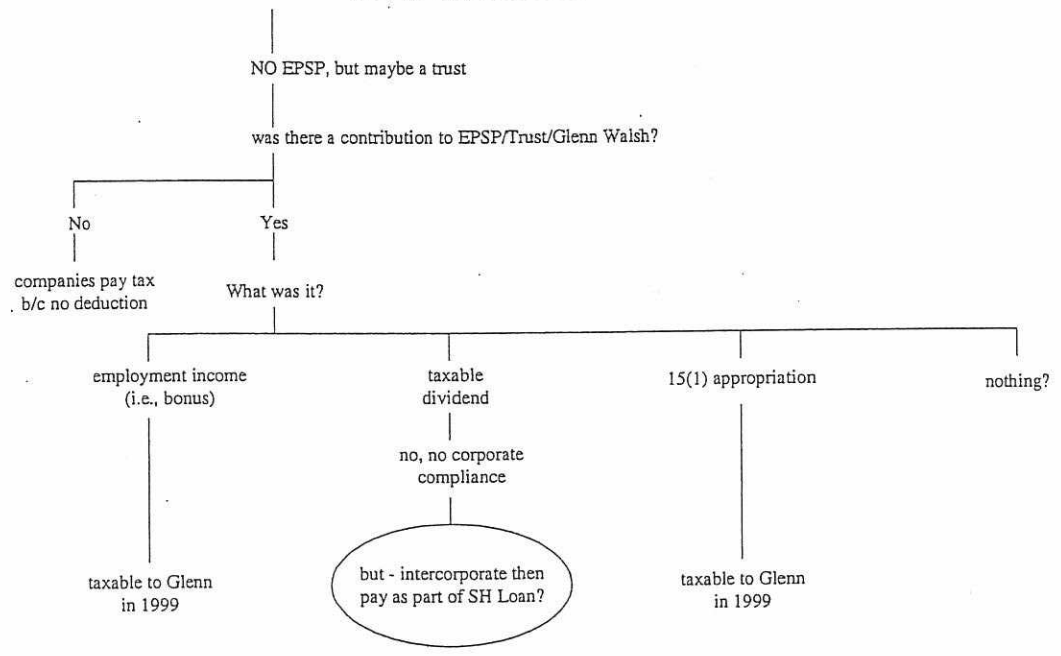
Estimate of Interest to December 31/07	\$ 4,465,359
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I. Review of Positions - EPSP - WALSH DEDUCTION.

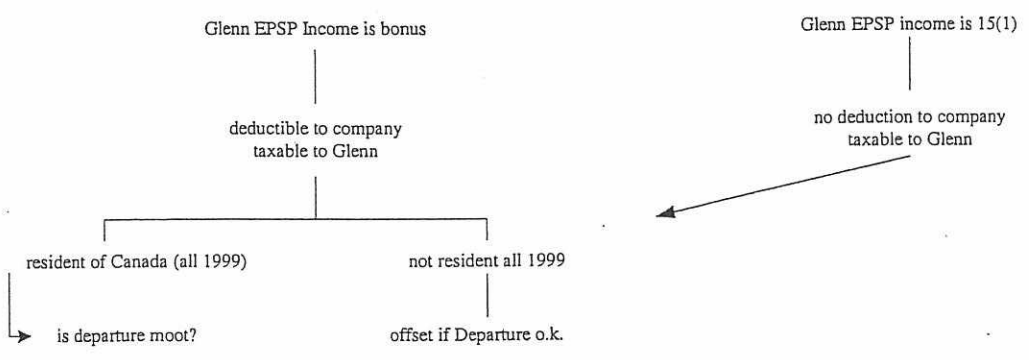
Note: TCL net income for 1999 - \$24,520,000

A. EPSP - they say can't set up for one employee

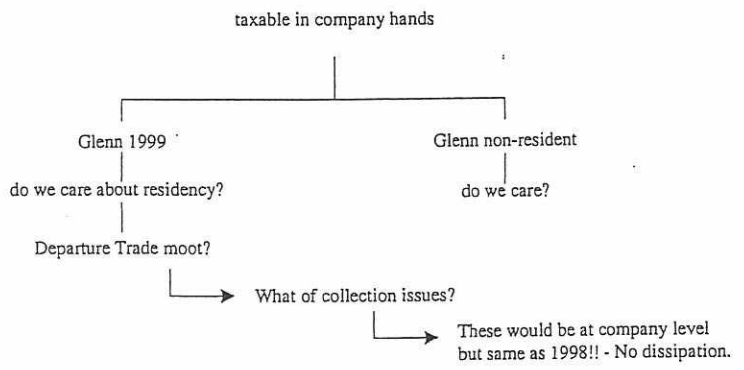
Note: No application of GAAR



B. If no EPSP, but taxable to Glenn [i.e., he received it]



C. If no EPSP, b/c "No Payments"



3. MANAGEMENT FEE Issues/Taxation Years 1999-2005

(i) **Conex Services Inc.** – taxation years 2000, 2001, 2002, 2003, 2004, 2005

Management fee amounts:

1999	\$ 240,041	(not under objection)
2000	\$1,373,000	(under objection)
2001	\$1,458,000	(under objection)
2002	\$1,296,000	(under objection)
2003	\$ 956,000	
2004	\$1,159,000	
2005	\$ 294,000	

Conex 1999 year not under dispute

Amount owing as at January 31, 2007

Tax	\$36,006
Interest	\$26,647
Penalties	\$ 3,550
Total	\$66,203

Amounts paid on account \$66,203

Conex 2000 year under objection

Amount owing as at April 21, 2006 (see April 21, 2006 account)

Tax	\$ 626,038
Interest	\$ 347,066
Penalties	\$ 137,300
Total	\$1,110,404

Amounts paid on account \$579,702

Estimate of interest to December 31/07 \$ 60,367

Conex 2001 year under objection

Amount owing as at September 29, 2005

Tax	\$522,697
Interest	\$287,942
Penalties	\$128,437
Total	\$939,076

Amounts paid on account **\$405,297**

Estimate of interest to December 31/07 **\$ 78,065**

Conex 2002 year under objection

Amount owing as at October 10, 2006

Estimate of Interest to December 31/07 TBD

MGT Fee amounts yet to be reassessed:

2003	\$ 956,000
2004	\$1,159,000
2005	\$ 294,000

(ii) **Tercon Contractors Ltd.** – taxation years 1999, 2002 and 2005

Management fee amounts:

1999	\$2,017,000	(under objection)
2002	\$3,305,000	
2005	\$(3,305,000)	

Tercon 1999 year under objection

Amount owing as at August 12, 2004

Tax	\$ 855,391
Interest	\$ 479,712
Penalties	\$ 18,937

Total **\$1,354,041**

Estimate of interest to December 31/07 \$ 308,044

Tercon 2005 year

Amount owing as at August 12, 2006

Tax \$

Interest \$

Penalties \$

Total **\$**

(assessment relates to section 78 inclusion of unpaid 2002 management fee)

Amounts yet to be reassessed

2002 \$3,305,000

(iii) **Tercon Services Ltd.** – taxation years 2000

Management fee amounts:

2000 \$1,221,000

Tercon Services 2000 year

Amount owing as at August 12, 2004

Tax \$855,391

Interest \$479,712

Penalties \$ 18,937

Total **\$1,354,041**

Estimate of interest to December 31/07

(iv) **Tercon Contractors North Ltd.** – taxation years 2002

Management fee amounts: \$842,000 (under objection)

2. Review of Positions -MANAGEMENT FEES

- 3 possible ways of treating the management fees paid to Apex

- Reg 105 - "services provided by Apex performed in Canada" 15%
- 212(1)(a) - "mgt and administrative fee" Part XIII 25%
- shareholder benefit / deemed dividend" - if excessive Part XIII 25%

↳ other way is 247 - "transfer pricing rules"

Reg 105/212(1)(a)

does Treaty reduce (Malta)

↳ 0(exempt) if not earned through a P.E. unless shareholder benefit / dividend (Article 10(4)) 15%

does Apex have a PE?

does Apex have no PE?

if yes, what is payment

→ Reassessment of Companies to deny deductibility?

↳ Is this out of concern that

→ MAY BE EXEMPT UNDER TREATY?

→ TAX PAYABLE (15-25%) is less than if paid to Cdn. resident?

→ taking strong position

→ Basis of reassessment

→ 18(1)(a)

→ 67 [abandoned]

→ 247(2)(a) + penalties under 247(2)(b)

→ Results

→ 18(1)(a) / 247(2)(a)

↳ CRA acknowledges denial of portion of management fees results in Part XIII tax adjustment

↳ they say "deemed dividend" [15,56(2), 214(3)(a)]

↳ also raise s.78 issue

→ Note: have now also included management fees in Glenn Walsh (Cdn. resident) assessment

→ if Glenn Walsh resident of Canada continuously

FAPI (?)

Departure - moot?

↳ does CRA still want to deny deductibility to Cdn. co's?

↳ where is deduction?

↳ will CRA refund withholding

Glenn Walsh → resident or non-resident

permanent home → not in Canada (leased out)

4. **APEX CONSULTING Issues/Permanent Establishment Issue**

2001 taxation year (under objection)

Amount due as at December 4, 2006

Tax	\$460,744
Interest	\$184,225
Total	\$644,969

2002 taxation year (under objection)

Amount due as at December 4, 2006

Tax	\$2,199,000
Interest	\$ 775,686
Penalty	\$ 263,880
Total	\$3,236,066

Estimate of interest to December 31/07 \$ 210,344

5. **TERCON SERVICES Issues/Requirement to Pay**

Reassessed pursuant to Elbee Requirement to Pay (under objection)

Amount due as at January 19, 2005

Tax	\$870,666
Total	\$870,666

6. Glenn Walsh – Overview of Departure Tax Filings

1998 year

Income – EPSP amounts	\$29,853,531
- Capital Gains (Conex Class C/Falcon)	\$9,383,596
- Commodity income	<u>\$2,330,805</u>
	\$41,572,578
Deductions	
Bad Debt Expense – Braich	<\$47,507,217>
Departure Interest Expense	
	<hr/>
	<\$5,934,639>

7. Available Funds

(a)	Management Fees – Withholding on Deposit at BDO (10%)	\$1,648,124
(b)	Management fees withholding (15%)(CRA)	\$1,464,432
(c)	Withholding Conex 1999 reassessment (CRA)	\$ 66,203
(d)	Conex 1998 year (CRA)	\$ 451,600
(e)	Conex 2000 year (CRA)	\$ 579,702
(f)	Conex 2001 year (CRA)	\$ 405,297
	Total:	4,615,358

* No interest has been

Positions of the CRA

We have had various ongoing discussions with the CRA surrounding their "global" position on matters. I would generally summarize the CRA position to be as follows:

1. The CRA is not particularly interested and hung up on recovering double tax on the EPSP/departure trade transaction. Put another way, the CRA is prepared to agree that the income should either be taxable in the various corporations' hands or taxable in Glenn's hands, but should likely not be taxed in both.
2. The Departure trade itself would not be problematic to the CRA if Glenn was a resident of Canada throughout the transaction. Put another way, if Glenn was ultimately determined to be a resident of Canada throughout the transactions, the CRA would likely not assess the transaction at all and may go so far as to allow any cost incurred in carrying out the transaction to be deductible.
3. Originally, the CRA was set to challenge the residency of Glenn Walsh largely because they see this as the "cleanest" way to uphold their position. Having said that, the CRA is far from certain of the strength of their position on residency. With the recent success the CRA achieved in the *Grant* case their position on the assessment on the "Departure Strategy" is extremely strong.
4. With respect to the management fees, the CRA does not appear to think they have much of a leg to stand on in terms of the amounts being characterized as either shareholder benefit or deemed dividend (which would result in a 25% withholding rate). Rather, it appears that in their mind the management fees are subject to either 15% withholding under Regulation 105 or 25% withholding under section 212(1)(a). The CRA is concerned that there may be Treaty application which in the case of Malta would reduce the withholding to zero should Apex file returns in Canada to recover the tax withheld.
5. The CRA has acknowledged that the assessment of the management fees under section 247, the "transfer pricing rules" was breaking new ground and would face a serious challenge in light of the Safety Boss case. They appear to be more inclined to ultimately rely on Apex having a PE in Canada to support their position.

Settlement Discussions to Date

The CRA has previously indicated a desire to entertain a settlement and have generally proposed the following. The settlement offer can be generally summarized as follows:

1. Glenn Walsh would agree to be treated as a Canadian resident throughout the various transactions. The consequence of this, would be that the CRA would attempt to recover one layer of tax as follows:
 - (a) CRA would reverse the EPSP adjustments and allow deductibility to the companies.
 - (b) With respect to Glenn Walsh, CRA would allow a deduction for the "cost" of the departure trade. The gain crystallized on departure previously would be reversed, any income inclusion would be calculated on the basis the transaction was carried

out entirely while Glenn was a Canadian resident. The CRA would be prepared to entertain transaction costs as a deductible expense in respect of the Departure Transaction.

- (c) For the years 1999 to 2002, the CRA would reverse all Canadian reassessments in respect of the management fees and would allow the management fees as properly incurred expenses to the companies. They would be prepared to consider whether to tax Glenn on his world-wide income or alternatively to treat Apex as having a PE and look at attributing a percentage of Apex's income to Glenn Walsh, with corresponding credit in either event for the withholding tax paid. The CRA indicated they would want to explore whether Part 14 branch tax would apply on any undistributed amounts.

The CRA also indicated that any offer which they were prepared to make would ensure there was only "one layer of tax". The CRA indicated they were also prepared to consider the "opposite" treatment which would be treating Glenn as a non-resident throughout and simply proceeding to tax the Canadian entities to recover "one layer of tax".

Settlement Options

Generally, the key components of structuring a settlement offer, after reviewing the various amounts in issue and would seem to be the general positions of the CRA would likely have to be built on the following foundation:

- A settlement would look to reverse the EPSP adjustments and allow the deductibility to the companies. This would result in all of the original reassessments being reversed with the corresponding result that the amount paid in respect of Conex's 1998 year in the amount of \$451,600 plus interest would be refunded;
- With respect to Glenn Walsh, we would agree that this transaction would be fully taxed on the basis Glenn was a Canadian resident or in a manner which allowed for corresponding reduction for both sides of the transaction. Generally, it may be required or more beneficial to have Glenn taxed throughout the transaction as a Canadian resident as this would have the corresponding effect of also reversing capital gains which arose on the deemed disposition of Conex Class C shares as well as allow for the deductibility of the transaction costs incurred in respect of the departure transaction.
- Although this would likely leave Glenn with a tax liability, it would be anticipated that a negotiated settlement would be reached with the CRA to discharge the liability.
- In consideration of Glenn agreeing to have the departure trade, the CRA would reverse all of the Canadian assessments in respect of the management fees and would allow the management fees as properly incurred expenses to the companies. We will have to calculate whether it is more beneficial to have Glenn taxed on his worldwide income for the years 1999 to 2002 (and beyond) or alternatively to treat Apex as having a PE in Canada and look at attributing a percentage of Apex's income to Glenn Walsh. In either event corresponding credit would be achieved for the withholding tax that has been paid (at 15%) which should largely cover any reassessments/liabilities. In addition, this would free up by way of refund in excess of \$1 million in cash on deposit with the CRA as well

as the \$1.648 million on deposit at BDO Dunwoody. It would be a goal to attempt to have these amounts largely cover any liability which Glenn would have as described above.


Curtis Stewart

From: Glenn Walsh [glennapex@yahoo.com]
Sent: 11 February 2008 11:21 AM
To: Curtis Stewart
Cc: Mack Smith
Subject: offshore status costs

Per our meeting last week, I am working up some approximate costs resulting from my lifestyle. I will attempt to get dave to help with some of the items, primarily professional fees. One issue in my mind is the advantage of the withholding tax situation with dividends such as from Carmacks--is this a result only of my departure, or could we have set up an offshore trust-owned entity such as Red maple anyway? If the former, the advantages offset some of the costs. If the latter, the costs stand(many millions). I hope to have a list to you this week.
--glenn

Glenn Walsh,
cell 206-465-3414
efax 360-230-2315

This is Exhibit " 34. "referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY, 20 12


A Commissioner for Taking Affidavits
for British Columbia


Voicemail Message from Glenn Walsh
Monday, February 11, 2008
File No. 54296-1

Curtis, Glenn Walsh calling. A couple of things: I am working on the list of the costs of being off-shore and I'll get some numbers to you in a couple of days here, I think. One question though, is the whole business of, I guess, Red Maple as owner of some of these companies and taking dividends with a 15% withholding which is pretty attractive. Is that a direct result of this off-shore or could be have done it without our departure strategy. Because that will impact on how we talk with BDO. I'll maybe follow this up with an email just to jog your memory on it. I think it has an important part of how we approach Jas on this whole issue.

So give me a call or email if you don't mind.

Thanks.

This is Exhibit " 35 "referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY, 20 12


A Commissioner for Taking Affidavits
for British Columbia

Curtis Stewart

From: Glenn Walsh [glennapex@yahoo.com]
Sent: 07 March 2008 10:21 AM
To: Curtis Stewart; Mack Smith
Subject: Fwd: GW * offshore costs
Attachments: pat1753022640

Curtis and Mack:

These are order-of-magnitude costs, some of which are arguable, but the total is representable of the impact of my tax "strategy". Add to this whatever tax is ultimately payable in Canada, plus the Malta tax paid (a relatively small, but not insignificant sum that we can determine if necessary), and we have an amount some orders-of-magnitude higher than the original problem! The cost/benefit ratio does not compute.

I will be back in Canada next week and into Kamloops. I hope we can then discuss settlement strategy, on two fronts.

G

Richard Vandermeij <richard@tercon.bc.ca> wrote:

Date: Thu, 06 Mar 2008 15:51:30 -0800
From: Richard Vandermeij <richard@tercon.bc.ca>
Subject: GW * offshore costs
To: glenn walsh <glennapex@yahoo.com>


fyi

rv

----- Original Message -----

From: "Tercon "
To: "AAA RICHARD VANDERMEIJ"
Sent: Thursday, March 06, 2008 3:48 PM
Subject: Docs from Tercon - **DO NOT REPLY**

This is Exhibit " 36. "referred to
in the Affidavit of GLENN
WALSH sworn before me
this 3 day of JULY, 20 12


A Commissioner for Taking Affidavits
for British Columbia

Please open the attached document. This document was digitally sent to you using an HP Digital Sending device. **DO NOT REPLY** Replies will not be delivered.

Glenn Walsh,
cell 206-465-3414
efax 360-230-2315