

Audit and inquiry

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OBJECTIVE

1. This practice directive explains the basis, structure, and purposes of the reporting and remitting requirements under the *Workers Compensation Act* and the Board’s authority to scrutinize these reporting and remitting requirements by way of audit or inquiry, and aids in the interpretation of *Assessment Manual Items: AP1-38-2* and *AP1-88-1*.

INTERPRETATIVE GUIDELINES

2. The *Act* establishes a regulatory scheme for the collection of the assessments necessary to “continue and maintain the accident fund for payment of the compensation, outlays and expenses under [Part 1 of the *Act*] and for payment of expenses incurred in administering Part 3 of [the] *Act*” [s. 36(1)].

I A SELF-ASSESSING AND SELF-REPORTING SYSTEM

3. Division 4 of Part 1 of the *Act* sets forth the self-assessing and self-reporting nature of workers’ compensation system’s assessment and remitting processes; and, in particular, sections 38(1), 39, and 40(1) of the *Act* define the broad structures of these obligatory processes. In the main, the Board is required to “notify each employer of the amount of each assessment due in respect of the employer’s industry and the time when it is payable” [s. 39(6)]; and thereafter each employer is required to “make a return on the form provided or prescribed by the Board” [s. 40(1)(c)] and to “remit the amount of the assessment” [s. 40(1)(d)].
4. The determinations and calculations prerequisite to the remittance of the amount of the assessment are implicit in section 38(1) of the *Act*, which directs that “[e]very employer must ... cause to be furnished to the Board ... an estimate of the probable

amount of the payroll of each of the employer's industries within the scope of" Part 1 of the *Act*. Section 38(3) directs that "[i]n computing the amount of the payroll for the purpose of assessment, regard must be had only to that portion of the payroll that represents workers and employment within the scope of" Part 1 of the *Act*. Thus, every employer, in the discharge of the statutory duty to furnish an estimate of its probable payroll, must postulate who are its workers, and report that portion of its payroll – subject to the statutory maximum – attributable to its workers.

5. *Practice Directive 1-38-2(A) – Assessable payroll* provides guidance on how assessable payroll is determined and aids in the interpretation of *API-38-2*.

II A SCRUTINIZED SYSTEM

6. In order to maintain the integrity of the *Act*'s regulatory scheme and the public's confidence in the integrity of the regulatory scheme, the Board is granted broad powers to scrutinize the scheme, including the authorities to audit payroll and to inspect all records which may be relevant to the calculation of payroll. Thus,

The workers' compensation system is by legislative design a self-assessing and self-reporting but scrutinized system.

7. Such scrutiny acts to deter non-compliance and to assure firms that the Board actively safeguards the fairness of the system.
8. In the main, such scrutiny entails:
 - determination, by way of audit or inquiry, of the adequacy of an employer's estimate of its payroll and remittance of assessment, and
 - if necessary, determination of a means to remedy – by way of estimate, reference to additional records or information (e.g., income tax returns), or the result of an inquiry – any deficiency in the employer's estimate of its payroll or remittance of assessment.
9. The juxtaposition of the regulatory scheme in Division 4 of Part 1 of the *Act*, the grants of audit and inquiry powers, and the common-law results in the following administrative structure and process:

REPORTING, REMITTING, AUDIT and INQUIRY (Duties, obligations, and powers)			THE ACT (section)	
REPORTING and REMITTING	Each employer must keep at all times complete and accurate particulars of its payrolls, which includes the records necessary to substantiate all prerequisite elements of its assessment, including status, remuneration, and classification.		38(1)(a)	
	The Board must notify each employer of the amount of each assessment due in respect of the employer's industry and the time when it is payable.		39(6)	
	Each employer must provide the Board with a report of its assessable payroll on the form provided or prescribed by the Board.		38(1)(b), 40(1)(c)	
	Each employer's report of its assessable payroll must only include the remuneration paid to its workers.	Status	38(3)	
		Remuneration		
Each employer must remit the amount of the assessment.		40(1)(d)		
AUDIT and INQUIRY	The Board may audit an employer (may examine the books and accounts of an employer to ascertain whether a statement furnished to the Board under section 38 is an accurate statement of the matters which are required to be stated in it, or to ascertain the amount of the payroll of an employer, or to ascertain whether an industry or person is within the scope of Part 1 of the <i>Act</i>).	The Board may determine the adequacy of an employer's report of its payroll.	Status	88(1), 88(3)
			Industry / industries	
			Assessment	
	The Board may determine a means to remedy a deficiency in the employer's payroll and assessment.	Estimate	38(2)	
Inquiry		88(1), 88(3)		

ADJUDICATIVE GUIDELINES

10. Section 88(3) of the *Act* permits the Board to conduct either or both of “examination [audit] or inquiry” in order to “ascertain whether a statement furnished to the Board under section 38 is an accurate statement of the matters which are required to be stated in it, or to ascertain the amount of the payroll of an employer, or to ascertain whether an industry or person is within the scope of” Part 1 of the *Act*.

I AUDIT

11. For the purposes of Part 1 of the *Act*, audit is a process by which the Board verifies that the self-assessment undertaken by an employer corresponds with the rules of the *Act* and policy. In particular, audit permits verification of an employer's estimate of its probable assessable payroll and its remittance of assessment.

12. Generally, in an audit, the Board confirms the following:

- (a) The extent of compliance with the reporting and remitting requirements under sections 38, 39, and 40 of the *Act* and Board policy; and

(b) That the employer is correctly classified within the Board’s Employer Classification System.

13. The nature and scope of the Board’s audit power must be considered within the context of the self-assessing and self-reporting system of the *Act*. An employer is charged to report its payroll; and the act of audit does not shift that charge onto the Board and require the Board to identify and calculate assessable payroll and notify the employer of that amount.

A Audit of affiliated firms

14. As the idea of affiliation or relatedness between or amongst firms is interwoven into Board policy respecting registration, classification within the Employer Classification System, and payroll allocation; it is foreseeable that the records of, or related to, an affiliate of a firm undergoing audit may be necessary to undertake, advance, or conclude the audit. If so, the production obligations herein apply to each such affiliated firm.

ACTIVITY	POLICY	TEST	CONSEQUENCE
Registration	AP1-1-3(b)(4)(ii) “Inescapable phase” exception	A corporation is: (a) providing essentially labour only for one firm at a time, and (b) there is a <u>degree of common ownership</u> between the two firms.	A corporation whose sole purpose is to provide an inescapable phase of another firm is not an independent firm and may not be entitled to be registered with the Board.
Classification	AP1-37-1(2) “Ancillary operations” exception	(a) The firm’s operations are ancillary, or an extension or add-on phase, to another firm’s operations, and (b) there is a <u>degree of common ownership</u> .	The classification of a firm whose operations are ancillary, or an extension or add-on phase, to another firm’s operations will be classified the same as that of the other firm.
Payroll allocation	AP1-38-3 “Management company” exception	A management company is: (a) a separate limited company; (b) not registered with the Board because it is under <u>common ownership</u> with the company for which it works; and (c) providing some degree of administrative or management services to the principal operating firm.	Payments to a management company are assessable to the payor.
	AP1-38-2(c) “Shareholders’ earnings”	If an individual is an active shareholder, director, or officer of more than one registered firm, then the combined remuneration from those firms is assessable.	The total remuneration paid to each active principal, shareholder, director, or officer of a corporation is assessable.

B Records

15. As the purpose of an audit is to verify information, it follows that the employer being audited is under obligation to provide the information necessary to substantiate each

of the determinations and calculations by which it determined its report of its payroll, its calculation of its payroll, and its remitted assessment.

16. To this end, section 38(1) the *Act* and policy charge each employer to “keep ... complete and accurate particulars of the employer’s payrolls”; and therefore impose a burden of production upon an employer to have at hand and to produce to the Board the records necessary to substantiate all prerequisite elements of its assessment, including status, remuneration, and classification (the industry in which the employer is operating, or, in case of affiliation, the industry in which it is embedded or integrated).
17. Further, section 88(3) authorizes the Board to request, and obligates an employer to produce, “all documents, writings, books, deeds and papers” and any other pertinent information required to effect an audit or inquiry.
18. See Appendix “A” to this practice directive.

C Estimate

19. Section 38(3) permits the Board to “make its own estimate of [an employer’s] payroll” where the employer fails to comply with its statutory duties under section 38(1), which includes the duty to “keep ... complete and accurate particulars of the employer’s payrolls”.

D Determination of a means to remedy

20. Upon determination that the self-assessment or remittance undertaken by an employer does not correspond with the rules of the *Act* and policy, the means of remedy is solely within the Board’s discretion: the Board is not obligated to audit or make inquiry if it believes that the inadequacy of an employer’s report of its payroll is manifest or that the default can be remedied by estimate. To this end, the disjunction implicit in section 88(3)’s grant of authority to conduct examination or inquiry is noteworthy.
21. In the main, the Board has discretion to audit or inquire but not a duty to do so.

E Post audit

22. Once a determination is made on an audit, the audited firm bears the evidentiary onus of proof of showing error in the assumptions underlying the audit.

F Classification review

23. Generally, a classification review – a determination of whether the firm is correctly classified within the Board’s Employer Classification System – is made in conjunction with an audit (for classification and assessment are inseverably linked

within rateable classes); but audit and classification review are nevertheless distinct procedures and are not inescapably yoked. Thus, the former may be undertaken without the latter.

24. An audit classification review requires that,
- (a) The employer's operations can be observed at the location at which the employer's payrolls were audited; or
 - (b) The assessment officer was provided with timely, complete, and accurate information of the employer's operations and with the ability to contemporaneously make inquiry about the employer's operations to an individual knowledgeable about the employer's operations.

II INQUIRY

25. Section 88(1) authorizes the Board to make "any inquiry which it is considered necessary to make [and] act on ... the result of that inquiry".
26. The nature and scope of the Board's power of inquiry must be considered within the context of the self-assessing and self-reporting system of the *Act*. The Board's power of inquiry is merely a facet of a system intended to verify compliance with the *Act* and policy. The Legislature's grant of it does not displace an employer's statutory duty to maintain the records necessary to justify its report of its payroll; for each of the *Act* and the common-law recognize that an employer has unique knowledge of the facts and is in the best position to maintain and adduce the records necessary to prove the material facts.
27. An employer who fails to keep complete and accurate particulars of its payroll cannot deflect from its failure by noting that the Board has power of inquiry and therefore can obtain the information and documents the employer was initially charged to keep, for the Board's power of inquiry is not intended to transfer an employer's obligation to maintain records or the burden of an employer's failure to maintain records to the aggregate of employers.

III CONFIDENTIALITY

28. In addition to statutes of general application and the common law, section 95(1) of the *Act* specifically directs that "[o]fficers of the Board and persons authorized to make examinations or inquiries under [Part 1 of the *Act*] must not divulge or allow to be divulged, except in the performance of their duties or under the authority of the Board, information obtained by them or which has come to their knowledge in making or in connection with an examination or inquiry under this Part."

APPENDIX “A”

- 1) Every employer must keep records, books of account, accounts, vouchers, and other information necessary for or incidental to the calculation and verification of its report of assessable payroll, and such shall include
 - (a) the name, status under the *Act*, social insurance number or business identification number, addresses, and the amount of remuneration paid to each person with whom the employer contracts and whose status may impact the employer’s assessable payroll, and
 - (b) financial statements, journals, ledgers including a general ledger or other book of final entry, Canada Revenue Agency forms and statements, and any contract, document, voucher, or the like necessary for an audit and understanding of the report.
- 2) Every employer who is audited must supply such records, books of account, accounts, vouchers, and other information in a comprehensive and organized manner for the year(s) being audited. This documentation may include:
 - *An Employer Payroll and Contract Labour Report (Form 1810) or Employer’s Remittance Forms (Form 1820)*, along with supporting working papers
 - The trial balance and general ledger
 - Any document necessary to support the entries in the trial balance or general ledger, including invoices, contracts or agreements, fish slips, delivery slips, deposit slips, work orders, cheques, bank statements, tax returns, and general correspondence
 - The synoptic journal, cheque register or cheque books
 - The most recent fiscal year-end financial statements (usually completed by an external accountant)
 - Records of individual earnings including Canada Revenue Agency statements (*T4 Statements of Remuneration Paid; T4A Statements of Pension, Retirement, Annuity and Other Income; T5 Statements of Investment Income, T5018 Statements of Contract Payments*)
 - *Individual Income Tax Return (T1 General)* of each active principal
 - Year-end workers’ compensation reports from other jurisdictions, if applicable
- 3) Every employer shall retain the records and books of account and every account and voucher necessary to verify the information contained therein until the expiration of six years from the end of the year in respect of which those records and books of account are kept.
- 4) Every employer required by this section to keep records and books of account who keeps records and books of account electronically shall retain them in an electronically readable format for the aforesaid retention period.
- 5) Every employer shall, at all reasonable times, make the records and books of account and every account and voucher necessary to verify the information therein available to officers of the Board and give them every facility necessary to inspect the books, records, accounts, and vouchers.