



**SEPTEMBER 2009.** Since the advent of GST in 1991, investment counsellors have been collecting GST on fees they charge clients for discretionary portfolio management. The legality of the practice is called into question by the Federal Court of Appeal in April of this year in a case involving the **Canadian Medical Protective Association**. The Court rules that portfolio-management services are not advisory services which would be subject to GST, but are exempt financial services, instead. The deadline to appeal the decision to the Supreme Court of Canada has passed in June.

This puts the investment counsellors in a quandary. It is clear that they have never had the legal basis upon which to collect GST on the impugned services. But the tax has been collected and it has also been remitted to the government as required by CRA. The tax they cannot legally collect is no longer in their possession. They will be hard-pressed to return it to the clients.

One of the following solutions may have to happen:

- The investment counsellors to apply for and obtain the return of the GST erroneously collected and remitted; and to, in turn, refund the tax to the clients.
- The clients themselves to apply for a rebate of the GST paid in error.
- The government to bring in legislation to make the tax collection lawful retrospectively.

By one estimate\*, GST at 5% on portfolio-management services can amount to \$75 million per year. Allowing the return of GST for the entire period of 18 years as in the first solution may bankrupt the government. Allowing the rebate of GST for the two-year limitation period as in the second solution may put further strain on the treasury in these economic times. The government may have no choice but to bring in retrospective legislation.

Before the government makes its next move, it may be advisable for clients of investment counsellors to consider applying immediately for a rebate of the GST paid. The law firms of **Stikeman Elliot LLP** and **Fasken Martineau DuMoulin LLP** have suggested that the rebate application may preserve the rights of the clients in case of a legislative amendment. The limitation period to apply for the rebate is two years from the day the GST was paid.

\*Investor Economics Inc, Toronto

### CanMAPP Strategic Planning Session

Date: Monday, September 28

Time: 12:00pm ~ 04:30pm

Place: Room 3, [Mississauga Central Library](#)  
301 Burnhamthorpe St W, Mississauga

Cost: nil

PD Credit: 4 hours

A light lunch is included at no cost. For further details and registration, visit: [CanMAPP.ca](#)

CanMAPP is a self-help group of accounting practitioners from coast to coast. Everyone is invited to participate in its events and in its organization.