TAX EXECUTIVES INSTITUTE, INC.

LIAISON MEETING QUESTIONS AND DISCUSSION TOPICS

Submitted to

CANADA REVENUE AGENCY

and

THE DEPARTMENT OF FINANCE

DECEMBER 7 – 8, 2021

2021 Canada Revenue Agency Liaison Questions[1]

1. Interest Relief due to audit delay during pandemic

As part of the Covid-19 Economic Response Plan, the Federal Government has taken a number of steps to alleviate hardships faced by registrants, including extending filing deadlines and deferring payments for individuals and businesses coping with mandatory business closures and self-isolation. The relief provided in the Covid-19 Economic Response Plan does not specifically address interest related to audits that commenced before March 2020 and resumed after the lock down period. The interest accumulated during this period could be substantial depending on the amount assessed and may result in financial hardship to registrants.

Section 281.1 of the ETA grants the Minister of National Revenue, through the Canada Revenue Agency (CRA), the discretion to cancel or waive all or any portion of any penalty or interest.

Question to CRA:

Will the CRA consider interest relief for audits that commenced prior to the lock down period and were completed after the lock down period where there is evidence that the registrant exercised reasonable care and due diligence, such as having provided data and responses in a reasonable time, given the disruptions of Covid-19?

2. GST/HST Validation

With respect to GST and HST validations, consider the following example:

Company A is established in Quebec. It has commercial activities throughout Canada. Due to Quebec's business registry rules, Company A has both full English and French legal names. For example: "Acme Lumber Store Limited" and "Magasin de Bois de Charpente Acme Limitee".

Company A has encountered customers who have been unable to validate its business number. After review, Company A determined that validation only works if the entire name in French and English is entered. This creates challenges as most customers and staff may not be aware of the full legal name in

[1] Unless otherwise noted, all legislative references herein refer to the *Excise Tax Act* (ETA).

both languages. The full legal name also is not referenced in customer facing documents (with the possible exception of legal agreements) and is causing frustration between customers and Company A's customer facing staff.

Question to CRA:

TEI and CRA discussed this issue at past Liaison meetings. Can the CRA provide an update on any work relating to business number validation as it relates to the example above? If possible, we would like a solution similar to Revenu Quebec's system.

3. CRA Audit Practices – Taxpayer Complaints

TEI Members are seeking guidance on how to approach the CRA in situations where auditors may not be following provisions of the ETA and/or CRA administrative policies. We provide two recent examples below.

Example 1:

Our first audit example relates to claiming input tax credits (ITCs). In a review of an ITC claim, an auditor requested a sample size of approximately 10 invoices for the entire two-year audit period. The registrant provided the invoices and the ITCs relating to the sample invoices were allowed. However, the auditor took the position that the remaining ITCs claimed related to exempt activities (i.e., earning interest and dividends), and did not allow the remaining ITCs. All ITCs claimed during the audit period were denied except for the ITCs on the sample invoices provided.

The auditor was provided with support that the registrant had other sources of taxable supplies, including zero-rated supplies that do not result in remittable GST/HST.

However, the auditor indicated that his intention was to complete the audit and specifically asked if the registrant was going to appeal the assessment. The registrant did intend to appeal but requested that the auditor reconsider finalizing the assessment to save the time and costs associated with filing a Notice of Objection. However, the auditor finalized the assessment as proposed.

Ultimately, the registrant's Notice of Objection was successful, and the appeals officer reversed the auditor's re-assessment.

Example 2:

This example relates to a GST/HST audit. A supplier in Alberta incorrectly charged HST at the rate of 13% rather than GST at the rate of 5%. The registrant claimed the full ITC at the 13% rate. The auditor disallowed the ITC without applying the offset allowable in Section 296. The auditor recommended either a credit from the supplier or a rebate for tax paid in error.

The supplier disagreed that the 5% rate applies and would not credit the 8% provincial component of the GST/HST. Therefore, the registrant applied for a rebate of tax paid in error. One year after applying, the rebate was denied. In its explanation, CRA stated that the amount should be claimed as an ITC.

Question to CRA:

The examples above can result in costly and time-consuming efforts for both the registrant and CRA (e.g., appeals review, rebate reviews). TEI would like to know the best way to handle similar situations in the future.

Is there a recommended process for taxpayers when CRA auditors do not appear to be applying the legislation and/or CRA administrative policies? Note that not all TEI members will have access to Rulings, the Compliance Programs Branch, or other CRA officials.

4. CRA Audit Practices – Referrals During Audit

During audit, certain issues being reviewed by an auditor may be outside the technical expertise of the auditor. In these situations, the taxpayer may request the issue be reviewed by a subject matter expert, rulings, federal departments and agencies, or other technical experts.

Questions to CRA:

(a) What is the CRA's process for communicating the details and recommendations of these requests back to the taxpayer?

(b) Is it CRA policy to make the taxpayer aware of the subject matter expert's findings?

(c) Is the auditor generally required to apply **the** findings of the subject matter expert?

5. CRA Audit Practices – Audit Requests/Queries and Response

Historically, CRA auditors have generally provided registrants 30-days to respond to audit queries. However, over the past year, many TEI members experienced short deadlines to respond to audit queries (e.g., 15-days).

Even prior to the pandemic, a 15-day request for information was difficult to comply with. During the pandemic, with most employees working from home, it became extremely difficult to quickly comply with requests.

Questions to CRA:

Can the CRA clarify the standard response time registrants should expect to respond to audit requests/queries? Our past experience is a 30-day response time. Has the CRA amended this policy to 15-days?

6. Application/Proposal of Gross Negligence Penalties

TEI members are seeing the application of Gross Negligence Penalties (GNP) increase. The application of GNP can cause undue hardships and result in a great deal of time and effort to appeal.

Certain TEI members report the application of GNP simply due to accounting errors. In one situation, GNP were applied to a large public company by the Refund Integrity Unit due to an accounting error for one transaction. The size and materiality of the amount was the reasoning for the application of the GNP.

In **Venne v The Queen**, the Federal Court stated that *"Gross negligence" must be taken to involve a greater neglect than simply a failure to use reasonable care. It must involve a high degree [o]f negligence tantamount to intentional acting, an indifference as to whether the law is complied with or not.*

Furthermore, in **897366 Ontario Limited v Her Majesty The Queen**, Justice Bowman said at paragraph 19,

> The imposition of penalties under section 285 requires a serious and deliberate consideration by the taxing authority of the taxpayer's conduct to determine whether it demonstrates a degree of wilfulness or gross negligence justifying the penalty. Section 285 is not there to permit assessors to punish taxpayers for being frustrating or annoying. It cannot be overemphasized that penalties may only be imposed under section 285 in the clearest of cases, and after an assiduous scrutiny of the evidence.

In **Farm Business Consultants Inc. v. The Queen**, 95 DTC 200 (aff'd F.C.A., 96 DTC 6085) at pages 205–206, the following discussion of the civil onus of proof required in the case of penalties appears (**with emphasis added**):

> … that subparagraph 152(4)(a)(i) has as its purpose the opening up of returns for statute-barred years where items of income, for a wide variety of reasons, are omitted or misstated, whereas subsection 163(2) **is a penal provision and that in applying it if there is doubt as to the type of conduct to which the misrepresentation is attributable the benefit of that doubt should be given to the taxpayer**. In *Udell v. M.N.R.*, 70 DTC 6019 Cattanach, J. said at page 6025:
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> There is no doubt that section 56(2) is a penal section. In construing a penal section there is the unimpeachable authority of Lord Esher in *Tuck & Sons v. Priester*, (1887) 19 Q.B.D. 629, to the effect that if the words of a penal section are capable of an interpretation that would, **and one that would not, inflict the penalty, the latter must prevail**. He said at page 638:
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> We must be very careful in construing that section because if imposes a penalty. **If there is a reasonable interpretation which will avoid the penalty in any particular case, we must adopt that construction.**

and at page 6026:

> I take it to be a clear rule of construction that in the imposition of a tax or a duty, and still more of a penalty if there be any fair and reasonable doubt the statute is to be construed so as to give the party sought to be charged the benefit of the doubt.
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> See also *Holley v. M.N.R.*., 89 DTC 366 at 369; *De Graaf v. The Queen*, 85 DTC 5280.
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> A court must be extremely cautious in sanctioning the imposition of penalties under subsection 163(2). Conduct that warrants reopening a statute-barred year does not automatically justify a penalty and **the routine imposition of penalties by the Minister is to be discouraged**. Conduct of the type contemplated in paragraph 152(4)(a)(i) may in some circumstances also be used as the basis of a penalty under subsection 163(2), which involves **the penalizing of conduct that requires a higher degree of reprehensibility.** In such a case a court must, even in applying a civil standard of proof, scrutinize the evidence with great care and look for a higher degree of probability than would be expected where allegations of a less serious nature are sought to be established [3]. Moreover, where a penalty is imposed under subsection 163(2) although a civil standard of proof is required, if a taxpayer's conduct is consistent with two viable and reasonable hypotheses, one justifying the penalty and one not, **the benefit of the doubt must be given to the taxpayer and the penalty must be deleted**

In the past, one of our members received proposals where the Penalty Report stated the following:

- *They **knew or ought to have known** that some of the xxxx claimed is for xxxx, and uses xxxx calculation;*
- *With the data, registrant **knew or ought to have known** that the equipment was not claimed in accordance…. With the data, the registrant **knew or ought to have known** there was insufficient information…*

In **Fourney v. R., 2011 TCC 520***,* Justice Hogan stated **(with emphasis added)**:

> [71] Subsection 163(2) of the Act describes the standard for imposing gross negligence penalties:
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> False statements or omissions

> 163(2) Every person who, knowingly, or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in a return, form, certificate, statement or answer (in this section referred to as a "return") filed or made in respect of a taxation year for the purposes of this Act, is liable to a penalty of the greater of $100 and 50% of the total of....
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> The subsection uses the word "knowingly" **but not the phrase "ought to have known"**, which the Respondent uses in both her reply to the notice of appeal and her Additional Written Submissions.
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> [72] Section 285 of the ETA uses the same standard as the Act, **again without the phrase "ought to have known"**:
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> [73] The standard referred to by the Respondent in her written submissions is wrong. Instead, the Appellant's actions need to be reviewed on the basis of whether her false statements were made "knowingly, or under circumstances amounting to gross negligence." The case law provides a road map for applying this standard to the facts herein. First, the Federal Court of Appeal's decision in Lacroix v. Canada,[41] supports the Appellant's position in the present case that the burden is on the Minister to prove that penalties should be imposed
>
> [80] It is clear that the Appellant lacks basic knowledge of accounting and tax matters. Her numerous errors in her tax returns point to her lack of skill in these areas. In a self-assessing tax system, however, **gross negligence penalties are not imposed for mere mistakes by a taxpayer who lacked the intention to misstate or omit**. Further, the case law establishes that if there is any doubt about intent, the benefit of that doubt should go to the taxpayer since the penalty provision in question is penal in nature. The same reasoning applies to the penalties assessed against the corporate appellants under the Act.

As established by the courts and to quote former Chief Justice Bowman:

> [GNP] is not there to permit assessors to punish taxpayers for being frustrating or annoying. It cannot be overemphasized that penalties may only be imposed under section 285 in the clearest of cases, and after an assiduous scrutiny of the evidence.

The examples discussed by TEI membership do not appear to match the application as established by the Courts. Again, this can result in undue hardship, and a great amount of time, effort, and expense to appeal.

Questions to CRA:

(a) Can the CRA please provide comments with respect to the practical application of GNP as opposed to what is set out in CRA's policy or audit manual?

(b) When GNP are proposed, will CRA consider including a copy of the Penalty Report written by the recommending auditor in the proposed assessment letter?

(c) Does CRA track data comparing GNP proposed vs. applied? For example:

(i) a percentage of GNP proposed vs. GNP applied at audit conclusion;

(ii) the dollar value of GNP as a collective;

(iii) the GNP overturned at Appeals;

(iv) the number of GNP reports reviewed and approved; or

(v) a breakdown between taxpayer size.

7. CRA policy of netting remittances and refunds for different accounts of Taxpayer

The CRA has a policy to allocate funds between different taxpayer programs (e.g., Income Tax, GST/HST, Payroll) when there is a payable under one of the programs and a refund in another. Often, taxpayers cannot easily reconcile this netting process.

For example, a refund due under a GST/HST account may be netted against a payable under a corporate income tax account and the balance of the refund is paid out by CRA to taxpayer. At the same time, the taxpayer may make a full payment on the amount owing for corporate income tax, resulting in a total over-payment. But for timing reasons, the payment may not have been processed/accounted for in CRA's system prior to the set-off.

It can often take several attempts to reconcile the accounts and amounts payable to the taxpayer. This also creates accounting issues where a portion of the refund remains as a receivable in the taxpayer's books. It can also be particularly challenging in seeking clarity if the taxpayer's authorized representative for one account is not also authorized on the other account.

Questions to CRA:

Would CRA consider providing an audit trail accounting for payments and refunds under My Business Account? This would include entries for all payments and offsets between a taxpayer's various program accounts. In addition, can CRA review the netting process with a goal of ensuring taxpayers can be promptly refunded when an over-payment is made against an account that CRA has offset a refund against with appropriate audit trail / reconciliation?

8. CRA administrative practice for Excise Tax on Insurance

Part I of the ETA imposes excise tax on Canadian residents that purchase insurance from an insurer that is not licensed to do business in Canada or through a broker or agent outside of Canada. Insurers and brokers are required to file returns with the CRA under section 5 of the ETA reporting insurance purchased by Canadian residents that may be subject to excise tax.

Based on the experience of one of our members, it appears the CRA's practice is to automatically register any Canadian business listed in those insurer and broker returns for an excise tax account and then request the taxpayer file excise tax returns. In the situation at issue, our member had not purchased any insurance to which excise tax applied, but the insurer made an error on their return by incorrectly attaching the member's name to insurance purchased by a similarly named company.

Despite this, the taxpayer was required to spend a significant amount of time dealing with an insurer and broker from which it did not purchase insurance to attempt to rectify the situation while CRA continued to send notices to the taxpayer to file an excise tax return. Fortunately, the CRA did not attempt to net off amounts for excise tax against the taxpayers' other tax accounts in the interim.

Question to CRA:

Could the CRA re-consider its practice of automatically registering businesses based on insurer/broker returns before providing such businesses with the opportunity to dispute information in the insurer/broker returns?

9. Simplified GST regime and the GST registry

In September 2021, TEI's Canadian Commodity Tax Committee flagged to the CRA that businesses registered under the simplified GST regime under Subdivision E of Division II of Part IX of the ETA are being issued GST/HST numbers identical in appearance to regular GST registrants. In addition, CRA's GST registry is producing a positive result for these simplified registered businesses. This creates the false impression they were registrants and causes issues for registrants in determining whether a particular

supplier was registered under the simplified GST regime or is a regular GST/HST registrant. As registrants routinely rely on CRA's GST registry to validate supplier's GST/HST numbers to determine eligibility for claiming ITCs, the positive match under the GST registry has increased the compliance burden on registrants, which must now take an additional step of searching the simplified GST/HST registry.

TEI had suggested one solution is to amend the entries in the regular GST/HST registry to provide some flag that a business was in fact registered under the simplified GST regime and not as a regular registrant. At the time, CRA informed TEI that it was aware of the issue.

Question to CRA:

Could CRA provide an update on its efforts to address this issue?

10. Simplified GST regime and Employee Reimbursement

Section 175 of the ETA deems property or a service acquired by an employee, for which the employee receives a reimbursement from their employer, to have been acquired by the employer and any consumption by the employee to be consumption or use by the employer and not the employee.

If an employee acquires property or service from a specified non-resident supplier that is registered under the simplified GST regime under Subdivision E of Division II, it is our understanding that the specified non-resident supplier would be required to charge GST/HST on the supply as the employee would be a specified Canadian recipient. Further, it is our understanding section 175 would not operate to allow the employee to provide the employer's GST/HST number to the specified non-resident supplier to prevent GST/HST from being charged to the employee on the supply. Property or services are similarly deemed to be acquired by employers under section 174 for employee allowances.

Questions to CRA:

(a) Given that paragraph 175(1)(c) deems the employer to have paid tax in respect of the supply at the time of the reimbursement, could CRA confirm that the "tax" deemed paid under paragraph 175(1)(c) would be viewed as GST/HST under the regular GST regime such that the employer would not be prevented from claiming an ITC by section 211.7?

(b) Similarly, given subsection 174(f) deems the employer to have paid tax in respect of the supply at the time the allowance is paid, could CRA confirm that the "tax" deemed paid under subsection 174(f) would be viewed as GST/HST under the regular GST regime such that the employer would not be prevented from claiming an ITC credit by section 211.7?

11. Distribution Platform Operator

In light of the newly enacted provisions set out in Subdivision E of the ETA applicable to distribution platform operators for qualifying tangible personal property supplies made through specified digital platforms, what is CRA's position with respect to the collection of tax and the disclosure of prescribed information set out in the Input Tax Credit Information (GST/HST) Regulations (the Regulations) necessary for claiming ITCs where a supply is made by a non-registered, third party seller but an invoice is issued in the name of the non-registered, third party seller by a distribution platform operator?

Below are two actual invoice examples highlighting the issue:

Example 1: Company A purchased a muscle relaxant product on the digital marketplace operated by a Marketplace Seller from Seller A and an invoice was issued by Marketplace Seller naming Seller A and disclosing Seller A's GST/HST registration number.

Example 2: Company B purchased a wireless keyboard product on the digital marketplace operated by Marketplace Seller from Seller B and an invoice was issued by Marketplace Seller naming Seller B but disclosing that the GST/HST was remitted by Marketplace Seller and disclosing the GST/HST registration number of Marketplace Seller.

Questions to CRA:

What is the CRA's position with respect to which the person's name and registration number must be disclosed on the documentation to satisfy the requirements set out in paragraph 3(b)(i) of the Regulations where the distribution platform operator is:

(a) the intermediary in respect of the supply; or

(b) deemed to be the supplier pursuant to paragraph 211.23(1)(a)?

12. My Business Account / Represent a Client Features (CRA)

In the 2019 Liaison meetings, TEI noted that it is not possible to view account balances for Selected Listed Financial Institutions (SLFI's) that are pension plans. The CRA replied that the functionality will continue to be limited until CRA can fully automate.

Question to CRA:

Can we have a status update on SLFIs that are pension plans viewing account balances on My Business Account?

13. Electronic signatures

CRA's website, *FAQ - Deferral of GST/HST Tax Remittances: CRA and COVID-19*, provides guidance regarding the use of electronic signatures during the Covid-19 crisis, and indicates that as a temporary measure, the CRA will be accepting electronic signatures for GST/HST documents submitted online.

Many organizations are now allowing employees to work from remote locations on a full or part time basis, making it cumbersome to obtain actual signatures. We expect many TEI members will not return to a full-time office environment at any point in the foreseeable future. We believe that there is sufficient technology available to evidence the actual individual that had signed the documents, as well as the date and time signed.

Questions to CRA:

(a) Are there any negative consequences that would prevent CRA from permitting the use of electronic signatures in the future?

(b) Notwithstanding (a) above, would CRA consider the use of electronic signatures going forward?

14. Lease of tangible personal property for immediate export (CRA)

Section 136 of the ETA deems a supply by way of lease, license or similar arrangement of the right to use tangible personal property to be a supply of tangible personal property. Paragraph 136.1(1)(a) causes each lease interval to be considered a separate supply, and paragraph 136.1(1)(d) deems all subsequent lease periods to be made in or outside of Canada consistent with the initial supply.

Assume Supplier A leases equipment to a non-resident, non-registered recipient (Recipient) who will use the equipment exclusively in commercial activities outside of Canada. Possession of the equipment is transferred to Recipient in Canada. Recipient hires a service provider to dismantle and prepare the

equipment for export. The criteria to qualify a supply of tangible personal property as a zero-rated export (Part V, Schedule VI par. 1) are met.

Question to CRA:

Since possession of the property supplied by way of lease is given to the recipient in Canada, we understand that the place of supply is in Canada pursuant to paragraph 142(1)(b). Subsequent to the deeming rule in section 136, a lease is considered to be a supply of tangible personal property.

(a) Will the first lease interval qualify as a zero-rated supply of tangible personal property?

(b) Will paragraph 136.1(1)(d) deem each subsequent lease interval to be a supply made in Canada, based on the place where possession was given to the recipient?

(c) Would the subsequent lease periods be eligible for zero-rating since the goods were immediately exported from Canada without further consumption or resupply in Canada prior to export?

2021 Department of Finance Liaison Questions

1. Update regarding visa network fees

On January 22, 2021, the Federal Court of Appeal (FCA) released its reasons in **Canadian Imperial Bank of Commerce v. The Queen**. The FCA found that services provided by Visa to CIBC were exempt from the GST/HST as financial services. In March 2021, the Attorney General and the Canadian Tire Bank consented to judgement in the companion Mastercard case and agreed that Mastercard network fees are exempt financial services.

A number of taxpayers have filed claims for tax paid in error on the very same Visa and Mastercard network fees and these claims have not been processed. Furthermore, taxpayers have been informed by the Appeals division that the claims held in appeals will not be processed until such time as the Department of Finance (Finance) has reviewed the issue. Finally, CRA auditors are continuing to assess taxpayers for failure to self-assess tax on Mastercard network fees on the basis that they have been instructed to continue treating these fees as taxable transactions until they receive further direction.

Question to Finance:

Can Finance please provide an update on the status of the Department's review?

2. Update Regarding Changes to Joint Venture Election

Section 273 of the ETA permits participants in a joint venture to elect for one participant, the "operator," to be responsible for the GST/HST obligations of the entire joint venture. In the 2014 Federal Budget, the Canadian Government expressed interest in expanding the joint venture election from joint ventures engaged in "the exploration or exploitation of mineral deposits and joint ventures engaged in activities prescribed by regulation" to "all joint ventures engaged exclusively in commercial activities, provided all the participants of the joint venture were also engaged exclusively in commercial activities." Despite repeating this intention to expand the joint venture election in later budgets, the Canadian Government has yet to release draft legislation. During last year's liaison meeting, Finance indicated it was working on proposed measures. TEI continues to advocate for the broad expansion noted above.

Questions to Finance:

(a) Please provide an update regarding when these measures will be announced and implemented?

(b) In certain circumstances, CRA has been issuing (proposed) assessments with respect to the JV election. Due to the Covid-19 pandemic and recent election, if the proposed measures are not forthcoming in a timely manner, can Finance comment / or clarify the proper way to resolve such outstanding issue(s)?

3. Digital Services Tax

Budget 2021 proposed to implement a Digital Services Tax (DST) effective January 1, 2022 "until an acceptable multilateral approach comes into effect with respect to the implicated businesses." Finance held consultation on the proposed DST to which TEI responded with a written submission. Budget 2021 also anticipated that draft legislation was to be released during summer 2021 for public comment. However, draft legislation on the DST has not been released at the time of writing.

On October 8, 2021, the OECD announced an agreement on a global minimum corporate tax which is expected to be effective in 2023. Deputy Prime Minister and Finance Minister Chrystia Freeland subsequently announced that "To ensure that Canadians' interests are protected in any circumstance, we intend to move ahead with legislation finalizing the enactment of a [DST], by January 1, 2022, in keeping with Budget 2021. The DST would be imposed as of January 1, 2024, but only if the treaty implementing the tax regime under this global agreement has not come into force. In that event, the DST would be payable as of 2024 in respect of revenues earned as of January 1, 2022. It is our sincere hope that the timely implementation of the new international system will make this unnecessary."[2]

Question to Finance:

Given the stated intent of the DST legislation would be enacted by January 1, 2022, could Finance comment on the status of the draft legislation?

4. Simplified GST regime and Employee Reimbursement

Section 175 of the ETA deems property, or a service acquired by an employee, for which the employee receives a reimbursement from their employer, to have been acquired by the employer and any consumption by the employee to be consumption or use by the employer and not the employee.

If an employee acquires property or service from a specified non-resident supplier that is registered under the simplified GST regime under Subdivision E of Division II, it is our understanding that the specified non-resident supplier would be required to charge GST/HST on the supply as the employee would be a specified Canadian recipient. Further, it is our understanding section 175 would not operate to allow the employee to provide the employer's GST/HST number to the specified non-resident supplier to prevent GST/HST from being charged to the employee on the supply. Property or services are similarly deemed to be acquired by employers under section 174 for employee allowances.

If it is the CRA's view that the employer would be ineligible to claim an input tax credit as a result of section 211.7, it would require employers to seek refunds from specified non-resident businesses for any purchases made by their employees. This would add significant burden to both registrant employers registered under Subdivision D of Division V and to specified non-resident suppliers.

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[2] *Statement by the Deputy Prime Minister on new international tax reform agreement*, Department of Finance Canada Statement, October 8, 2021. https://www.canada.ca/en/department-finance/news/2021/10/statement-by-the-deputy-prime-minister-on-new-international-tax-reform-agreement.html.

Question to Finance:

Could Finance consider amending subsection 211.7(2) to add sections 174 and 175?

5. <u>De Minimis Financial Institution Thresholds</u>

The annual dollar thresholds in paragraph 149(1)(b) of $10 million and in paragraph 149(1)(c) of $ 1 million have been the same since these two provisions were introduced. The $10 million threshold in paragraph 149(1)(b) has been in place since 1991, albeit the amendments in 1997 did provide some relief in requiring both the $10 million threshold and 10% of revenue tests to be met. The $1 million threshold in paragraph 149(1)(c) has been the same since 1997. While inflation has generally been low in recent times, more businesses continue to become de minimis financial institutions merely because the thresholds have continued to creep as they have remained unchanged for over twenty years.

Question to Finance:

Would Finance consider updating or increasing these thresholds in line with inflation of the last 24-30 years?

6. <u>Agency/Billing Agency Elections and Amalgamations</u>

Under section 271 of the ETA, a new corporation created out of an amalgamation of two or more predecessor corporations is deemed for the purposes of Part IX to be a separate person from each predecessor corporations, except for the purposes of the provisions listed in section 271 and those in the *Amalgamations and Windings-Up Continuation (GST/HST) Regulations*. Subsection 177(1.1) allows principals and agents and billing agents to jointly elect to allow the agent or billing agent to collect and remit GST/HST on behalf of the principal.

Subsection 177(1.1) is not a listed section in either section 271 or in the *Amalgamations and Windings-Up Continuation (GST/HST) Regulations* with the result that if a predecessor corporation had entered into a GST506 election, a new election would appear to be required post-amalgamation even if the amalgamated corporation kept the same name and business number as the predecessor corporation that had entered into the election.

After acquisitions, it is common for a business to amalgamate the acquired corporation into its existing operating corporation and continue using the existing operating corporation's business number and name. An election entered into by the existing operating corporation could therefore inadvertently no longer apply as a result of amalgamating the acquired corporation into the operating corporation despite that the principal and agent/billing agent continue to act as if the election was valid.

Question to Finance:

Could the Finance therefore consider adding subsection 177(1.1) (and by extension subsection 177(1.11)) to the *Amalgamations and Windings-Up Continuation (GST/HST) Regulations?*

7. Digitized sales tax reporting

Several countries have implemented or have announced plans to digitize sales tax reporting and real-time e-invoicing (including the United Kingdom, France and Mexico). This has increased compliance obligations, and system changes for VAT registrants.

Question to Finance:

What Finance's position on these types of initiatives?