

2020 CRA/TEI Commodity Tax Liaison Meeting
PART A- COVID Pandemic-Related Issues

FINAL

1. Electronic Signatures (Question for CRA only)

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 crisis¹

Question for CRA

A. The FAQ references a new electronic service enabling businesses to submit GST/HST documents on the My Business Account menu. The FAQ does not reference the Represent a Client login option. Is the functionality in Represent a Client the equivalent to using My Business Account for this purpose? If not, please describe the differences.

B. When reviewing the submission options within Represent a Client, the "Submit a PDF form with Electronic Signature" screen states this service should only be used to submit a completed PDF of a GST/HST return, rebate form, or election that includes an electronic signature. Please confirm an electronic signature for this purpose is described in the document "Government of Canada Guidance on Using Electronic Signatures," paragraph 2.1, which references documents signed by electronic means, and scans or photographs of wet signed documents.

C. The same option to submit electronically-signed PDF documents does not exist in the Excise Tax account section of a business account. Was this intentional, or is this option forthcoming?

D. It would be efficient for taxpayers to continue to submit electronically-signed documents beyond the COVID crisis. Does CRA plan to accept electronic signatures permanently? If not, why not?

CRA comments

A. Yes, the functionality is the same for users of both Represent a Client (RAC) and My Business Account (MyBA). A representative can log in, choose the appropriate business number (BN), and is then able to submit any GST/HST form electronically with an electronic signature on behalf of their client.

¹ <https://www.canada.ca/en/revenue-agency/campaigns/covid-19-update/frequently-asked-questions-gst-hst.html>

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B. Yes, the CRA will accept the document(s) using these methods.

C. The same option to submit documents electronically is not currently available for Excise Tax accounts but it is being considered for a future enhancement to the portal.

D. The ability to submit electronically-signed documents through MyBA and RAC is a temporary measure introduced to provide flexibility during the pandemic. So far, there are no plans to make this a permanent feature. However, we appreciate that from a client perspective this is a desirable service and we will continue to monitor the success of the initiative to determine long term plans.

2. Credits and Refunds During COVID (Question for CRA only)

Question for CRA

The COVID crisis has caused sudden business losses and mass layoffs, causing some businesses to have difficulty performing their usual month-end functions on time. Account reconciliations, payment processing, documentation controls, general compliance management, and other functions have challenged many businesses, given resource constraints and the shift in focus to “survival mode.” Will CRA provide administrative tolerance during this period in light of these circumstances?

CRA comments

While the CRA understands that businesses are experiencing unprecedented challenges, the CRA has not developed any specific guidance or policies on administrative tolerance in light of COVID-19. Each situation is looked at on a case-by-case basis. During the pandemic, audit program areas, such as Refund Integrity, have exercised administrative tolerance with proactive interest relief in cases where there are amounts owing by registrants. Other program areas have also exercised discretion on a case-by-case basis as each audit program resumed activity and will continue to do so.

3. Large Case Audits During COVID (Question for CRA only)

Question for CRA

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Large file auditors typically visit businesses and remain on-site to complete their audit work.

Many businesses are not open for employees to return to the office, and, if they are, they may not allow the public or visitors on site. Please provide an update regarding how CRA is auditing large case files during the pandemic and varying degrees of lockdown.

CRA comments

Employee and client health is our top priority. Large Business Audit staff are currently equipped to work remotely therefore our large business audits are generally completed without the need for site visits at this time. In the near term, as the pandemic continues and in its immediate aftermath, we expect that most audits will continue virtually to the extent possible to ensure the safety of CRA's employees and the public. Any future visits to client locations or any other in-person interaction will follow specific protocols, which are still in development. Guidance provided by the Federal Public Service will be followed and Provincial/Territorial and local conditions will be taken into consideration prior to any decision to request a site visit or other in-person interaction.

4. Communication by Email (Question for CRA only)

Although the "Submit Documents" function within My Business Account allows registrants to upload documents and communicate with CRA, some TEI members maintain email is a more efficient means of communication.

It appears CRA has relaxed its position on email communication during the COVID-19 pandemic. However, TEI's members have seen inconsistent approaches from CRA's representatives concerning email communication. Some CRA representatives refuse to accept email communication, while other representatives accept it. Other CRA representatives will agree to email correspondence if the taxpayer or registrant responds affirmatively to the below email:

Please read the following information carefully and respond as directed below.

I authorize the Canada Revenue Agency (CRA) to correspond with me by unencrypted email at this address for the purpose of discussing my XXXXXXXX.

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I am aware of and fully understand and accept the risks associated with communicating tax information by way of unencrypted email. I understand and agree that the CRA does not provide assurance with respect to the protection, confidentiality, or security of unencrypted email transmissions. I accept the risks inherent in sending information by unencrypted email and understand that all such email messages sent over the Internet

may be considered as being accessed and disclosed to unknown third parties somewhere in the world. I agree not to hold the CRA or its employees liable for any damage or loss, however, caused arising out of the communication of my tax information by unencrypted email for the purpose set out above. I acknowledge that I have been informed about the availability of the CRA online portals (My Account and My Business Account) as a means of securely communicating with the CRA.

I agree that if I send personal or tax information to the CRA in response to this email I will be deemed to have authorized correspondence by unencrypted email.

Please respond to this email by typing one of the following responses:

- I have read the above information and would like to proceed with the CRA communicating my tax information by way of unencrypted email.

*- I have read the above information and **DO NOT** wish to have the CRA communicate my tax information by way of unencrypted email. I would prefer to communicate in an alternative manner.*

Question for CRA

Is CRA considering a widespread use of emails as a form of communication if registrants and taxpayers consent? If so, could CRA follow-up with a formal notice or policy statement to guide CRA representatives and the public?

CRA comments

In consideration of the restrictions and constraints caused by the pandemic, the CRA deemed it necessary to provide CRA employees with greater flexibility in accepting information from and responding to taxpayers through unencrypted email. Consequently, the CRA released a

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temporary set of instructions and protocols to facilitate email communications with taxpayers as a last resort option for specific critical functions; employees were instructed to follow the strict protocols, which includes the need to secure taxpayer consent with an affirmative response to the email text provided.

That being said, with many restrictions and constraints being lifted, regular services (e.g. postal services) are now able to resume normal activities and as such, the CRA is investigating suitable approaches for the future state of these temporary instructions – including the possibility of widespread use of email as a form of communication post-pandemic. Details about the CRA’s plans will be shared publicly once they have been determined.

5. Uploading Excel Files to Online Accounts (Question for CRA only)

The distancing requirements associated with the COVID-19 pandemic required substantial changes to how taxpayers and CRA communicate. TEI members appreciate CRA has had to consider priorities during this transition and has taken great strides to ensure the safety of both the Agency’s and taxpayers’ personnel.

In an audit where taxpayers have submitted data by electronic means to CRA, CRA auditors commonly request Microsoft Excel files. The MS Excel format is very efficient for various formulaic expressions, data analysis, etc. Although CRA auditors prefer to receive this file format through the Represent a Client and My Business Account secure sites, there is inconsistency amongst auditors’ ability and willingness to send Microsoft Excel / .CSV file types to taxpayers via these secure sites.

Question for CRA

Please address the options available for exchanging Excel / .CSV files.

CRA comments

CRA portals (i.e. My BA and Represent a client) allow taxpayers to submit their electronic books and records electronically in multiple formats, including Excel and CSV formats that are convenient for a high percentage of audits. However, depending on the specific needs of the

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audit, we may request the full accounting backup file, as it would provide us a complete set of raw data files needed for the audit (i.e. General ledger, Sales journal, Purchases journal, accounts payable, accounts receivable, accounts master file, suppliers master file, payroll information, etc.). This information is often not entirely available in the customized reports generated by taxpayers in Excel or CSV format; a report often includes limited information that does not meet the needs of the audit. We also have automated macros to convert data from a number of popular accounting software backups (i.e. Sage50, QuickBooks, Sage300, Acoma, MS Dynamics, and Caseware WP). Our macros require the backup file to convert the data. Auditors can also send information to TPs via the CRA portals (i.e. Audit Enquiries), including Excel (i.e. working papers), and PDF (i.e. letters). Currently, the Excel file types allowed out through the portal are xls,xlsx, xlsx and xlsb. For CSV files, the auditor can open a CSV file in Excel, save it as xls or xlsx file in Excel, and send it to the TP via the portal (Audit Enquiries). For Microsoft Word documents, the auditor can save the document/letter in PDF format and send the PDF file through the portal. Microsoft Word has a function to convert a document/letter to PDF format. At this time, the CRA portals limit taxpayers to 1 GB per submission, for receiving information. CRA is working continuously towards increasing this limit in coordination with our IT area. When taxpayers are unable to use the CRA portals to provide data to CRA, they can use other methods including the following:

- Provide the data via their secure FTP site, if applicable.
- Mail or drop the data at the TSO (we recommend that they encrypt the media with a strong AES256 encryption before mailing it)
- In-person visit: as a last option when other options are not possible, a CRA auditor or Computer Audit Specialist can arrange for an in-person visit to pick up or drop data, as applicable.
- For more information on the use of these methods, you can submit a request to the [DCASD support mailbox](#).

6. Time Limits and Other Periods Act (COVID-19) (Question for CRA only)

The *Time Limits and Other Periods Act (COVID-19)* allowed the Minister to make an order suspending certain limits under the *Excise Tax Act (Canada)* (“ETA”), particularly the

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reassessment limitation periods in Section 298 of the ETA. The Minister issued an Order extending most reassessment periods under Section 298 that would have expired on or after May 20, 2020, for a maximum of six months, but not beyond December 31, 2020.

Question for CRA

- A. The Canada Revenue Agency News Release relating to the Order states the auditor would inform taxpayers if CRA is applying an extension to a reassessment period under the Order. Is it CRA's intent that the suspension of reassessment time limits would apply automatically in all cases, or will CRA use discretion in applying the extensions provided under the Order?
- B. If CRA will use discretion when applying the extensions, what factors will CRA consider when applying discretion not to extend the reassessment limitation periods?
- C. Despite the extension granted under the Order and the resumption of audit activity, please comment on whether CRA will more frequently seek waivers to further extend periods for reassessment if the registrant provided all required information to the auditor and was available to the auditor since March 2020.
- D. Does CRA have further comments on how registrants should expect auditors to apply the suspension of limitation periods in practice?

CRA comments

- A. The Order temporarily extends all applicable time limits on the Minister's ability to reassess, and therefore applies automatically. The CRA continues to use its discretion under the subsection 296(1) of the ETA on whether or not to reassess in individual circumstances. If a taxpayer is being reassessed based on a new statute barred date, the taxpayer will be informed.
- B. The Order automatically extends the reassessment limitation period.
- C. Subsection 298(7) allows a person to file a waiver with the Minister to waive the relevant (re)assessment period. As always, the CRA cannot compel a person to file a waiver.

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In the context of the TLOPA, the CRA will not seek waivers more frequently than in the course of its normal audit process to further extend periods for reassessment. The parameters within which waivers are requested remain unchanged under the TLOPA.

D. For more information, see Frequently asked questions regarding the Time Limits and Other Periods Act (COVID-19) at <https://www.canada.ca/en/revenue-agency/services/covid-19-ministerial-orders/time-period-other-limits-faq.html>.

PART B- My Business Account and Represent a Client Issues

7. My Business Account and Represent a Client Features (Question for CRA only)

Question for CRA

Please share information regarding upcoming revisions to My Business Account and Represent a Client.

CRA comments

Represent A Client (RAC) – February 2021

Trust Account Registration Initiative

An online T3 trust account registration service is being implemented to support the registration of a Trust and the issuance of the Trust Account Number (T3 Number).

The new T3 trust account registration service will provide trustees or their representatives the option to register and receive a trust account number in real time. As part of the registration process, the capability of submitting documents such as trust documents, wills, authorization requests, Form T733 for RCAs and other legal documents will be available.

The new trust account registration service will be available to all users via a link within the three portals - My Account, My Business Account and Represent a Client.

As a result of Budget 2018, it proposed that certain trusts will be required to provide beneficial ownership information on an annual basis, under the proposed ITA section 204.2(2)(a), many express trusts will be required to file income tax and information returns.

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In order to request a trust account number, the user will be required to enter information such as the trust type, trust name, trustee information, language, DOD & SIN if applicable, along with a few other fields depending on the trust type

Mail

Change the name of the “Access Mail” link to “Mail” to match My Account and My Business Account.

Junior Representative (Limited)

To create a new role in RAC that limits the user to a few options. Feedback from large businesses state that a new role should give the user the ability of submitting authorization requests only; although, this could be expanded in the future as user needs arise. To address this need for BNs, a new role will be created called Junior Representative (Limited).

Trust Account Registration Initiative (same notes as above)

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My Business Account (MyBA) – May 2021

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MyBA will have a newly designed homepage that brings forward balance and return information. In addition, each program will now have its own overview page.

Taxpayer relief requests will be accepted through MyBA.

In Progress

Multi-factor Authentication

As part of our future initiatives to ensure Canadians feel confident and safe using our online services, we have added multi-factor authentication to enhance security following the recent cyber-security incidents. Multi-factor authentication is an extra layer of security designed to protect users' information through a two-step verification process.

Multi-factor authentication was launched as a pilot for randomly selected individuals, including representatives, with the goal of including all users of CRA's online services in the future. Multi-factor authentication requires users to enter a one-time code that is sent to them by SMS or landline, before gaining access to their online account.

Select users will be prompted to provide a telephone number where the CRA can send a one-time passcode when the user logs in. The user will have two methods of receiving this one-time passcode. If the user selects "text message", when sent their one-time passcode they will receive a text message to their mobile phone. If the user selects "Telephone call", when sent their one-time passcode they will receive a telephone call with a voice recording stating the passcode.

8. Business Enquiries (Question for CRA only)

When calling the Business Enquiries line, CRA Agents ("Agents") are often not able to immediately determine a particular caller's authorization and/or its corresponding authorization Level (1, 2, or 3).

Recently, a TEI member ("Caller") with a Level 2 authorization called CRA to make a request on behalf of a GST registered partnership. At the outset of the call, Agent was not able to identify Caller as having authorization and insisted Caller was not authorized. At the same time, Caller accessed the account via his/her REP/ID in Represent My Client. Caller and Agent went back and forth until Caller found the Group ID page in Represent My Client and mentioned the

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Group ID to Agent. Agent was then able to verify Caller had Level 2 access. What may have been a 5-10 minute phone call was a 30-40 minute call.

Question for CRA

Is it possible to add an authorization screen to CRA's system that would show all authorized representatives and their respective levels, aggregated by direct/delegated authorization, Rep IDs, Group IDs, etc., which Agents could reference at the outset of a call? Such a resource would minimize the time spent verifying authorizations.

CRA comments

We are pleased to inform you that this change will be implemented on November 30th, 2020. The telephone agents now have the ability to view if/when the caller's RepID is associated to an authorized representative firm, business, or GroupID, including the level of authorization. Beginning in January 2021, RepIDs will also be required by anyone calling on behalf of these types of authorized businesses.

9. Direct Deposit Request (Question for CRA only)

It can be difficult for businesses, particularly large multi-national businesses, to set up Direct Deposit. Currently, Direct Deposit can only be requested by individual(s) with Level 3 Authorization. Level 3 authority is generally granted to owners, directors, and officers who, in most cases, are not tax professionals and do not have a RepID on CRA's system. These individuals (owners, directors, or officers) may not be Canadian residents and may reside in other countries. These factors make it extremely difficult for these individuals to call in or obtain a RepID, particularly if they do not have a Canadian Social Insurance Number.

Furthermore, as of July 5, 2019, CRA eliminated *Form RC366 – Direct Deposit Request for Business*. Although Direct Deposit can sometimes be set up through a business's financial institution, this is not always possible.

Question for CRA

Would CRA consider permitting individuals with Level 2 Authorization to make Direct Deposit requests and changes via My Business Account?

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In the alternative, would CRA consider re-introducing a form similar to the previous *Form*

RC366 that can be executed by a(n) owner, director, or officer?

CRA comments

No, it will not. The authority to update direct deposit information for CRA purposes is a very unique responsibility that is reserved for a person who has signing authority over a business. This includes a business 'owner' or someone who has had the authority delegated by an owner (a level 3 representative).

The CRA is not considering re-introducing a direct deposit form. We moved from the paper RC366 form to the self-serve electronic direct deposit signup option in MyBA to enhance the security and timeliness of direct deposit enrolments. Additionally, we expanded on the Direct Deposit enrolment process to make it accessible via financial institutions this year to increase secure and timely options for businesses.

10. Correcting GST/HST Return Online (Question for CRA only)

A person preparing a GST/HST return may realize immediately after submitting the return that she/he has made a mistake entering an amount. It is not possible to immediately correct such errors online through My Business Account, and registrants must wait for CRA agents to process the original return.

Question for CRA

Would CRA consider the possibility of allowing registrants to correct a return online via My Businesses Account before the original return is processed? This option would facilitate the processing of the return and would reduce the administrative burden for all parties

CRA comments

The CRA is not considering a change to the amendment process for GST/HST returns at this time. In order to ensure the accurate tracking of all GST/HST return data being transmitted, the original submission must be confirmed in the system prior to accepting any modified amounts.

11. My Business Account/Represent a Client Features (Question for CRA only)

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Before the QST “harmonization,” CRA’s My Business Account/ Represent a Client allowed a Selected Listed Financial Institution (“SLFI”) to view and transfer (between years and/or between program accounts) GST/HST balances similar to non-SLFI entities. At the 2019 TEI-CRA Liaison Meeting, CRA indicated discussions were taking place between Revenue Quebec and CRA to automate the QST SLFI process.

Question for CRA

Please provide an update regarding CRA’s efforts to automate the QST SLFI process.

CRA comments

The CRA and Revenu Québec are still engaged in ongoing discussions on automating the QST SLFI process. However, we don’t have any specifics to announce at this time.

12. Fuel Charge Registry (Question for CRA only)

Question for CRA

Does CRA have plans to enhance the Fuel Charge Registry search function for the Federal Fuel Charge? Will the Fuel Charge Registry be updated to show the province(s) and fuel types for which a taxpayer is registered? Will the Fuel Charge Registry be made public, similar to the GST/HST Registry?

CRA comments

Subsection 107(8) of the Greenhouse Gas Pollution Pricing Act (Act) provides the Minister the authority to make available to the public the business number and the business name of a person holding a registration under the Act. Under this authority, the CRA created a registry that is accessible through the “MyBa” platform to verify the registration status of a person. The CRA is looking at making the registry available in a manner similar to that of the GST registry which is available to the general public outside of the MyBa portal. Regarding the update of the registry to include other information, the scope of the information that may be made public is limited to that which is provided under subsection 107(8). While the listed province and the fuel types are an integral part of a registration, the scope for making information available to the public remains limited to the two elements.

PART C- Appeals**13. Appeals Workload (Question for CRA only)*****Question for CRA***

Please provide an update regarding the Appeals Division's workload. Many of our members are experiencing significant delays in the Division's assignment of their appeals. Please provide a breakdown by region for the number of unassigned appeals in inventory and discuss what steps CRA is taking to get backlogged files assigned.

CRA comments

Throughout the Covid-19 pandemic, objections related to Canadians' entitlement to benefits and credits were identified as a critical service, and continued to be delivered. In addition, objections and referrals to specialized teams continued to be reviewed.

From June 29, 2020 onward, the objections program resumed the delivery of all its operations. However, some delays were possible due to restricted access to certain offices given provincial and local circumstances. However, we are currently producing more than the volume of intake and we are expecting to see improvements from here on out.

We also publish information on our objections-related webpages on expected timeframes for assigning low- and medium-complexity objections to appeals officers, as well as average timeframes for their resolution. Monthly updates on our timeliness can be found here.

In November 2020, the average time to resolve low and medium-complexity GST/HST objections was:

- low-complexity: GST/HST averages 82 days
- medium-complexity: GST/HST averages 299 days

In terms of next steps to work through our inventory, we have increased the number of officers assigned to GST objections, particularly on the higher-complexity workloads.

Question for CRA

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Question from the audience: GST high complexity is very small volume, but will there be any improved practices coming out of High Complexity (ITA) that we can apply to the different GST workloads?

CRA comments

We created a pilot to centralize the intake and screening of specific workloads in Income Tax. The pilot commenced in August 2020 and we continue to explore opportunities to identify and refer issues that need to be reviewed by specialized teams. Our findings will be analysed in order to determine what could be applied to both our medium and high-complexity GST workloads.

14. GST/HST Objections (Question for CRA only)

In the Fall of 2016, the Office of the Auditor General of Canada released its report on CRA's management of income tax objections. That report set out several recommendations to improve the amount of time CRA takes to provide taxpayers with a decision on their objections. The Minister of National Revenue stated an action plan was underway to reduce processing times, and the Minister would review the processes used to address objections.

Question for CRA

Please provide an update on CRA's efforts to reduce processing times for GST/HST objections.

Please address whether a similar review is underway to reduce processing times for GST/HST objections and provide an update on the status and any results of this review.

CRA comments

For the benefit of the new members, I will reiterate the answer that was provided at last year's conference. As you may remember, in November 2016, the Auditor General tabled his fall report on **Income Tax Objections**. The report made recommendations for the CRA to improve the objections process and service to Canadians. The CRA has refined its programs to implement the recommendations of the Auditor General to improve service to Canadians.

The CRA has taken concrete steps and has improved the timely processing of **both income tax and GST/HST objections** by:

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- Our client service standards for resolving:
 - low-complexity objections within 180 days, 80% of the time,
 - medium-complexity objections within 365 days, 80% of the time

Both service standards were being met prior to the pandemic and we are working hard to make up for the time we lost this spring.

- publishing on its objections-related webpages a description of each level of complexity and expected timeframes for assigning low- and medium-complexity objections to appeals officers, as well as average timeframes for their resolution. Monthly updates on our timeliness can be found [here](#).
 - In November 2020, the average time to resolve low and medium-complexity GST/HST objections was:
 - low-complexity: GST/HST averages 82 days
 - medium-complexity: GST/HST averages 299 days
 - updating its website with clear and accurate information to direct taxpayers to the most appropriate channel to resolve their issue, including two new decision tools:
 - launched in 2018 was an income tax decision tool and
 - the GST/HST decision tool was launched in 2019.
- The CRA implemented an action plan to foster and strengthen collaboration between its program branches, and leverage the Appeals Branch's Feedback Loop initiative. This initiative, which responds to one of the AG's recommendations, is identifying opportunities to resolve issues before an objection is filed and intending to improve future assessments.

The improvements to timeliness began with low-complexity then medium-complexity objections. These best practices are currently being considered for high-complexity objections, including those related to GST/HST.

Considering the Covid pandemic, some of the improvements to our timeliness that we have made in the last two years may have been slowed down a little bit this year. However, we have increased the number of officers assigned to GST objections, particularly on the higher-complexity workloads, in order to continue to improve the delivery of our GST program.

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In addition to all these changes, we also created a pilot to centralize the intake and screening of specific workloads in Income Tax. The pilot commenced in August 2020 and we continue to explore opportunities to identify and refer issues that need to be reviewed by specialized teams. Our findings will be analysed in order to determine what could be applied for our GST high complexity workload.

PART D- Registrant Issues

15. Ceasing to be a Registrant on Amalgamation (Question for CRA only)

When a person ceases to be a registrant, subsection 251(2) of the ETA effectively creates two stub reporting periods for the person: (1) the first reporting period, commencing on the first day of the reporting period in which the person ceases to be a registrant and ending the day before the person ceases to be a registrant, and (2) the second period, commencing on the day the person ceases to be a registrant and ending on the last day of the calendar month that includes the day the person ceases to be a registrant. Thus, a person could be required to file two returns due to ceasing to be a registrant.

Section 271 of the ETA deems an amalgamated corporation to be a separate person for each of the predecessors, aside from the purposes listed in paragraph 271(b) and those prescribed in the Amalgamations and Windings-Up Continuation (GST/HST) Regulations (“Amalgamation Regulations”).

As section 251 of the ETA is not a prescribed purpose under the Amalgamation Regulations, it means that each predecessor corporation could have two stub reporting periods upon an amalgamation.

Each predecessor corporation will have a first stub reporting period from the first day of its reporting period until the day before the amalgamation date and a second stub reporting period from the amalgamation date to the end of that calendar month.

Assume there are three predecessor corporations, ACo, BCo, and CCo, each of which is a monthly filer, that are amalgamated to form Newco. Further, assume that Newco takes the GST/HST registration number of ACo.

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Consider subsection 251(2) of the ETA and in the context of two scenarios.

FINAL

A. The amalgamation occurs at 12:01 am on July 1st

B. The amalgamation occurs at 12:01 am on June 30th

Scenario A

As a result of subsection 251(2) of the ETA, each predecessor would have the following periods:

ACo – (1) June 1 – June 30; (2) July 1 – July 31

BCo – (1) June 1 – June 30; (2) July 1 – July 31

CCo – (1) June 1 – June 30; (2) July 1 – July 31

Newco's first reporting period would effectively be July 1 – July 31, under subsection 251(1) of the ETA.

Scenario B

As a result of subsection 251(2) of the ETA, each predecessor would have the following periods:

ACo – (1) June 1 – June 29; (2) June [30]* – June 30

BCo – (1) June 1 – June 29; (2) June [30]* – June 30

CCo – (1) June 1 – June 29; (2) June [30]* – June 30

- *Note* – The second reporting periods above would begin and end on June 30 in this scenario, rather than beginning on June 29 as indicated in your submission.

Subsection 251(1) would create reporting periods of June 1 – June 29 and June [30]* – June 30 for Newco.

- *Note* – The second reporting period above would begin and end on June 30 in this scenario, rather than beginning on June 29 as indicated in your submission. In addition, if Newco didn't exist until June 30, it wasn't a person before that date and therefore would not have a reporting period from June 1 to June 29.

Question for CRA

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A. Please confirm whether CRA would consider each of ACo, BCo, and CCo to be non-registrants on the amalgamation date, such that subsection 238(2) of the ETA would only require returns to be filed under Scenario A for the reporting periods of June 1-30 for each of ACo, BCo, and CCo, and July 1-31 (and onwards) for Newco?

B. Please confirm whether CRA would consider each of ACo, BCo, and CCo to be non-registrants on the amalgamation date, such that subsection 238(2) of the ETA would only require returns to be filed under [Scenario B] for the reporting periods of June 1-29 for each of ACo, BCo, and CCo, and June [30]-30 (and onwards) for Newco?

C. If the responses to Questions A and B are that each predecessor would need to file for the second stub periods, despite not having any tax collected post-amalgamation, it would mean both ACo and Newco would need to file a return for the same period under the same GST/HST number (since Newco adopted ACo's GST/HST account). Please comment on how the two returns under the same number for the same period are handled by CRA's GST/HST Netfile and CRA's My Business Account.

CRA Comments

When two or more corporations (the predecessors) amalgamate to form a new corporation, the predecessors' GST/HST registrations are normally cancelled effective the date of the amalgamation. On ceasing to be a registrant on a particular day, subsection 251(2) deems a person to have two separate reporting periods. The first deemed reporting period begins on the first day of the reporting that includes the particular day and ends on the day immediately preceding the day the person ceases to be a registrant. The second deemed reporting period begins the day the person ceased to be a registrant and ends on the last day of the calendar month that includes the day the person ceased to be a registrant.

Section 251 is not prescribed in the Amalgamations and Windings-Up Continuation (GST/HST) Regulations. Therefore in the case of Scenario A, ACo, BCo, and CCo would each have two separate reporting periods for GST/HST purposes as a result of the amalgamation – the first being the period from June 1 to June 30 and the second being the period from July 1 to July 31. Under Scenario B, each of the predecessor corporations would also have two separate reporting periods – one from June 1 to June 29 and the other beginning and ending on June 30.

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However, subsection 238(2) only requires a person who is not a registrant to file a GST/HST return for each of its reporting periods for which net tax is remittable by the person. Therefore, where a predecessor corporation under either Scenario A or B has not collected and does not have any GST/HST collectible after the date of the amalgamation (for example, where Newco begins to report all business activity from that date forward), the predecessor corporation would not be required to file a return for its post-amalgamation reporting period.

PART E - General CRA Questions

16. CRA and Finance - Section 167 Question

The ETA allows a person to sell a business or part of a business to a recipient and for the parties to make a joint election under Section 167 that no GST/HST will be payable on property or services supplied under the agreement if the transaction meets certain conditions:

A. The supplier must sell “a business or part of a business that was established or carried on by the supplier or that was established or carried on by another person and acquired by the supplier.”

B. The recipient must acquire “ownership, possession or use of all or substantially all of the property that can reasonably be regarded as being necessary for the recipient to be capable of carrying on the business or part as a business.”

C. If the supplier is a GST/HST registrant, the recipient must also be a registrant.

Question for CRA

With respect to the phrase “a business or part of a business that was established or carried on by the supplier,” how specific does the type of business need to be for the Section 167(a) election to apply?

For example, assume a supplier was selling all assets of a taxi business, except for the taxi license. Further, the supplier was aware the recipient did not possess a taxi license, and the

recipient intended to use the assets to run a food delivery service. In such a case, could the parties make a joint election under section 167?

CRA Comments

Section 167 applies when a person (the supplier) sells a business or part of a business that the supplier had established or carried on and under the agreement for the supply of the business the purchaser (the recipient) acquires ownership, possession or use of all or substantially all of the property of the business or part of the business that can reasonably be regarded as being necessary for the recipient to be capable of carrying on the business or that part of the business. For the application of section 167 the sale of a business is different than the sale of some assets that are required to run a new different kind of business.

Therefore, in order to consider the application of section 167 it is first necessary to identify the nature of the business in question. The specificity of a business for the purposes of section 167 will depend on the characteristics that define the particular business and therefore, what property is essential to the continued operation of that business. Once all of the essential property is identified, a determination of whether all or substantially all of the property necessary for the operation of the business has been provided to the recipient under the agreement for the supply can be made. Although not required to carry on the business or part as a business, the recipient must be capable of carrying on the same kind of business or part as a business that was established or carried on by the supplier with the assets acquired under the agreement.

The key characteristic of a taxi business is the transportation of passengers. Further, a taxi business generally requires a license to operate. If a particular property that has significant value for the continued operation of the business is not being supplied under the agreement for the supply of the business, that property must be included in the determination of whether all or substantially all of the property reasonably necessary for the recipient to be capable of carrying on the business or part of a business is being supplied under the agreement.

Note that in each situation it will be a question of fact as to whether section 167 applies.

17. Purchase Orders (Question for CRA only)

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Assume the final invoice to a customer is correct but reflects a change to the customer's purchase order, for example, where the customer picks up the goods. The customer's payment and tax are calculated based on the final invoice.

Question for CRA

- a) Is the customer required to amend the purchase order to match the final invoice?
- b) Is the contract the final invoice or the purchase order?
- c) Does CRA require support for the change to the final invoice, such as internal documentation? Are any specific documents necessary to support the change?

Do any of the above answers change if the customer's payment is calculated based on the purchase order rather than the final invoice?

CRA comments

Based on the information in the question, it appears that the supplier has made a supply of TPP, determined the place of supply based on the location (province) where physical possession of the TPP is transferred to the recipient, and collected tax at the rate for that province. This appears to be the correct result and is in accordance with the Excise Tax Act.

- a) In this circumstance, there would not necessarily be a requirement for the purchaser to modify their purchase order to reflect the modified terms. Rather, the supplier must ensure that it has adequate documentation to support the place of supply determination it has made.
- b) To make this determination, we would need to consider all of the relevant facts for a particular scenario. The place of supply for a particular supply of TPP is determined based on the actual place of delivery of the TPP. The place of supply and resulting rate of tax would be determined based on this even where the terms in a purchase order suggest otherwise.

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- c) As indicated in the response to a) the supplier would need to maintain documentation to support the place of supply determination it has made.
- d) No, the place of supply determination is based on the province where the actual delivery takes place. In all circumstances, the supplier must maintain adequate documentation to support this determination.

18. Beaudet Case (Question for CRA only)

The calculation of fair market value (FMV) was the subject of a 2014 Tax Court of Canada (TCC) case (*Beaudet v. The Queen* (February 14, 2014 – 2014 TCC 52)). The TCC ruled the cost method should be used to apply the self-supply rule to a new building because the value of the property should be measured by the “primary” market, not the “secondary” (potential resale) market.

The TCC also ruled on the application of various adjustments to the cost to calculate the FMV using the cost method (e.g., builder’s profit, unexpected or abnormal cost overruns, financing, etc.).

CRA includes the cost methodology as an acceptable method to determine FMV in its publication *P-165R -- Fair Market Value for Purposes of Part IX of the Excise Tax Act*.

CRA has challenged TEI members using the cost method to calculate the FMV for deemed supplies of newly-constructed residential rental properties while the new residential rental property rebates are under review.

Question for CRA

Please comment on the use of the cost method, in particular when determining the FMV of a newly-constructed residential property subject to the deemed supply rules, including:

- A. When CRA views the cost method as acceptable; and
- B. When CRA views the cost method as unacceptable.

CRA comments

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A. The cost approach, the direct comparison approach and the income approach are the three methods of valuation that should be considered in any real estate appraisal assignment. The Canadian Uniform Standards of Professional Appraisal Practice (CUSPSP) of the Appraisal Institute of Canada (AIC) states: excluding an approach to value that is relevant under the “Reasonable Appraiser” test requires an Extraordinary Limiting Condition and supporting reasons. Excluding an approach to value that is not relevant under the “Reasonable Appraiser” test requires supporting reasons only.² It is the position of the CRA that the cost approach is an acceptable method of valuing a property for the purpose of administering the *Excise Tax Act* (ETA) for GST self-supply.

The cost approach is often applied by the Courts in the context of the valuation of newly constructed residential complexes. Cost is favoured on the basis that construction costs are thought to be relatively easy to ascertain on the date of substantial completion, provided that appropriate records have been kept by the taxpayer. Moreover, from the CRA’s perspective, using actual costs ensures that the amount of GST/HST paid is not less than the Input Tax Credits (ITC) claimed on the construction of the building.

While the Courts have not exclusively used the cost for the valuation of residential complexes under section 191, cost has been found to be appropriate for new construction absent special circumstances, such as where the costs cannot be recovered in a subsequent sale.³

Again, all three methods of valuation should be considered in any real estate appraisal assignment, in determining the FMV.

B. When determining the Fair Market Value (FMV) of a newly-constructed residential property subject to the deemed supply rules, there are very few instances where the CRA views the cost method as unacceptable. However, cost and value may not necessarily be synonymous. Cost is defined as the amount of money necessary to produce a commodity, whereas value is thought of as the relationship between something desired and a potential purchaser.

Inherent in the test of value is the Principle of Substitution, which affirms that when a property is replaceable, its value tends to be set by the cost of acquiring a substitute property with attributes

² CUSPAP – Real Property Appraisal Standard Rules (8.2.8): AIC

³ Fair Market Value Under the Excise Tax Act: Maurice P. Chiason, Q.C., Stewart McKelvey, CICA 2011

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that are equal, assuming no costly or unnecessary delay is encountered when making the substitution.⁴ Thus, if there is a significant delay in the completion of a new construction in a severely declining market, the FMV may actually be less than the value derived from the cost method.

There may also be special circumstances in which some of the costs incurred for the construction of a building may not be reflected in its fair market value. For example, if there were cost overruns and other inefficiencies during construction, the cost of such property may be above its fair market value. The Tax Court concluded in *Timber Lodge Ltd. v Canada* by stating that a building's fair market value equals its cost less inefficiencies, such as cost overruns. Adjustments to the cost approach should be made where it is considered to have an affect on the FMV for GST/HST self-supply purposes.⁵

The cost method may not always be the most appropriate method for the purpose of administering the ETA for GST/HST self-supply when dealing with a substantial renovation to an existing building. In some cases, the actual cost of a substantial renovation may exceed the FMV of the property being renovated. However, in this and all instances, all three methods of valuation should be considered before deciding which method is most appropriate given the facts of the each case.

19. Wash Transaction Policy (Question for CRA only)

One criterion for applying the wash transaction policy in audit situations is the assessed registrant must have remedied the situation to ensure tax is collected on future supplies of a similar nature.

Question for CRA

What is CRA's audit policy regarding how to apply the wash transaction policy to complex transactions or transactions involving large organizations, where the remedy process may take several months (or longer)?

⁴ An Introduction to Real Estate Appraising (AIC) 3rd printing, p.9-1.

⁵ Timber Lodge Ltd v Canada

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Further, CRA has moved toward tighter deadlines for replies to audit queries. It would seem unnecessary for the registrant to file a Notice of Objection to apply the wash transaction policy where it clearly applies. CRA typically audits each year separately when a two-year audit period for large entities is selected. Assume an issue is identified and assessed in year one of the audit, and the same issue exists in year two of the audit. How would the registrant meet this test if there is not significant time between completing the first year audit and the second year audit?

CRA comments

GST/HST Memorandum 16.3.1, *Reduction of Penalty and Interest in Wash Transaction Situations* sets out administrative guidelines for the CRA in these situations. There is no specific audit policy regarding how to apply the wash transaction policy to complex transactions or to transactions involving large organizations. The CRA will consider the facts in each case to determine the steps being taken by the registrant to ensure GST/HST is collected on future supplies of a similar nature. However, when applying the wash transaction provisions, the CRA should take into consideration whether the returns were filed before the registrant was initially (re)assessed for this issue.

20. Total Sales and Other Revenue Related Issue (Question for CRA only)

Part 1) Revenue Reconciliation from Line 101 of the GST/HST Return to the T2 Return

We understand CRA auditors have instructions to reconcile the data set provided to the T2 income on the registrant's tax return. T2s are prepared using International Financial Reporting Standards ("IFRS"). For example, the IFRS rules require that revenues be recognized in proportion to the work's progress, not according to the billing cycle for construction contracts. Therefore, there may be a difference between the accounting revenues and the amount reported on line 101, which corresponds to the supplies (invoiced amounts). Auditors might not understand the difference between accounting revenue recognition and revenue recognition under ETA.

Part 2) Reconciliation from Line 101 to Line 105 of the GST/HST Return

We understand Line 101 of the GST/HST Return is a statistical field used by CRA to determine a registrant's reporting period threshold amount, instead of an auditable field. For larger

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businesses, the amount reported on Line 101 will rarely, if ever, correlate to the amount of GST/HST reported on Line 105. However, CRA auditors have attempted to determine the completeness of revenue reported on Line 101 and requested support for the amount reported on Line 101 in an attempt to reconcile that amount to the GST/HST reported on Line 105.

The reconciliation process consumes significant taxpayer resources. TEI recommends that if a business is a monthly filer and has proven its GST/HST data is complete and accurate, with appropriate controls in place, the auditor should focus on net tax issues rather than the accuracy of Line 101 and reconciliation to T2.

Question for CRA

- A. Please clarify CRA's policy concerning the requirement to reconcile the data to the T2 return for a GST audit, and address what guidance CRA provides auditors to apply this policy?
- B. Please confirm Line 101 is not an auditable field, and taxpayers are not required to complete it if the reporting frequency is monthly.

CRA comments

Comparing the information on a registrant's GST/HST returns with other tax filings is an important step in assessing risk. Although line 101 does not impact the net tax calculation, line 101 is a mandatory field and the accurate reporting of sales data on this line will help with future risk assessment. Auditors will adjust this line if it is not correctly reported. Registrants must complete it regardless of their reporting frequency.

It should be noted that registrants who report sales that include zero rated supplies made in Canada, exempt supplies, and zero rated exports now have the choice to report these items separately on their electronic GST/HST return.

Three new lines are now available:

- line 90 for reporting taxable sales (including zero-rated supplies) made in Canada
- line 91 for reporting exempt supplies, zero-rated exports, and other sales and revenue
- line 102 for reporting an associate's taxable sales when applicable]

21. Divisional Returns and Accounting Periods (Question for CRA only)

Under subsections 239(1) and (2) of the ETA, a registrant that has several divisions or branches may ask the CRA to open a separate RT 000X account for a particular division or branch by filing the form Application or Revocation of the Authorization to File Separate GST/HST Returns and Rebate Applications for Branches or Divisions (GST10). The division or branch must (1) be separately identifiable by location or by the nature of its activities, and (2) have separate records, books of account, and accounting systems to be eligible. For example, a manufacturing company could open a separate RT 000X account for a plant that has a distinct location (manufacturing and distribution center for recreational products) and separate records, books of account, and accounting systems.

Some businesses or divisions may have accounting periods that differ from calendar months, often due to operational or accounting system constraints. Under subsection 243(3) of the ETA, a registrant whose accounting months differ from calendar months may ask CRA to modify its fiscal months for a particular RT 000X account by filing the Form Notification of GST/HST Accounting Periods (GST71). Thus, the registrant's accounting periods will match with the GST/HST reporting periods. The only requirement under the ETA is the minimal and maximal length of the months.

A registrant may have a branch with an account/file number (RT 0001) whose fiscal periods correspond to calendar months, and a branch with an account/file (RT 0002) whose accounting months are different from calendar months. When the registrant attempts to notify CRA for the fiscal months of the account RT0002 by filing Form GST71, CRA has denied the request because the principal account RT 0001 is based on calendar months. The legislation does not provide this requirement. The problem with this denial is the accounting months are not aligned with the GST/HST reporting periods for this file.

Question for CRA

If a particular RT 000X account has separate records, books of account, and accounting systems, why is it not allowed to have its own fiscal months for GST/HST purposes? Would CRA allow such registrants to file their returns according to their own fiscal months?

CRA comments

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The rules for determining fiscal quarters under subsection 243(1) and fiscal months under subsection 243(2) apply to the fiscal quarters and months in a fiscal year of a person. In addition, the requirement to file Form GST71, Notification of Accounting Periods for GST/HST also applies to a person who is a registrant. Accordingly, a Form GST71 can only be processed for the person as defined in Part IX of the ETA.

The term “person” is defined in subsection 123(1) as “an individual, a partnership, a corporation, the estate of a deceased individual, a trust, or a body that is a society, union, club, association, commission or other organization of any kind.” As such, it refers to a specific legal entity and does not include a branch or division of the person. Further, the provisions under section 239, which provide the authority for a registrant to file separate GST/HST returns in respect of a branch or division, do not deem such a branch or division to be a separate person from the parent organization.

Therefore, a division or branch cannot have accounting periods that are different than its primary GST/HST account. As noted in the instructions on Form GST71, “If you have been authorized to file separate GST/HST returns for branches or divisions of your business or organization, the branches or divisions have to use the same accounting periods as the parent organization.”