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January 20, 2025

Soren Halverson  
Assistant Commissioner  
Legislative Policy and Regulatory Affairs Branch  
Canada Revenue Agency

Via email: [soren.halverson@cra-arc.gc.ca](mailto:soren.halverson@cra-arc.gc.ca)

**RE: CRA Implementation of Capital Gains Rate Increase**

Dear Ms. Halverson:

Tax Executives Institute, Inc. ("TEI") is writing to express our concerns with the Canada Revenue Agency's ("CRA") administrative guidance released on January 3, 2025, titled "The CRA is administering proposed capital gains inclusion rate legislation." This guidance addresses CRA's position on the proposed capital gains inclusion rate increase which was put forth by the Department of Finance as a Notice of Ways and Means motion ("NWMM") on June 11, 2024, but as of this writing has not been introduced as a Bill in the House of Commons.

We recognize CRA's long-standing policy to administer tax legislation upon its introduction as a NWMM, regardless of its actual entry into force. This position assumes the legislation will ultimately receive Royal Assent and will therefore be enacted into law during the current government's time in power. With a functioning federal government, this position gives the CRA time to prepare for the passage of the legislation into law and effectively achieve its mandate of administering legislation in a timely manner.

Due to the prorogation of Parliament on January 6, 2025, however, there is significant uncertainty around the future of the NWMM, exacerbated by the unique circumstances surrounding Parliament. It seems likely there will be a call for an election soon after the prorogation period expires on March 24, 2025. Due to this possibility, any party can form a government, including the Conservative Party of Canada who has opposed the NWMM in the past. TEI sets forth the recommendations below to ensure taxpayers are treated fairly and have certainty in their tax affairs in respect of the NWMM.

If CRA does not suspend administration of the NWMM's proposed capital gains inclusion rate increase, taxpayers with tax payment deadlines fast approaching face two options when complying with the NWMM. Neither of these

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options is appealing and TEI submits they both would constitute an undue burden on taxpayers.

First, taxpayers can pay the tax related to the increased capital gains inclusion rate based on the assumption that the legislation will ultimately become law. However, enacting this legislation would presumably require an election, re-introduction of the NWMM into Parliament, and passage through Parliament before receiving Royal Assent. Because the CRA cannot assess returns based on unlegislated positions, this could result in lengthy delays in commencing the statute barred period and appropriately applying payments to the tax years in question. If the legislation is not enacted, taxpayers would then have unnecessarily tied up cash for an extended period and must file amended tax returns to request refunds. Based on Q1 2025 published rates, these funds would generate an annual 4% return, which is nominal when compared to taxpayers' cost of borrowing.

Alternatively, taxpayers can file their returns and pay tax based on the current capital gains inclusion rate. If the amendments are ultimately enacted, they will then have to file amended tax returns and pay the additional tax. Interest would then be assessed based on the under remittance of tax at an annual rate of 8% (based on Q1 2025 published rates), penalizing the taxpayer for following current law.

TEI has significant concerns about Notices of Assessment issuance delays because of proposed legislation. Such delays essentially hold tax returns in abeyance and thereby extend the period before a taxation year is statute barred, leading to increased uncertainty for taxpayers. If the CRA were able to assess tax returns based on draft legislation, taxpayers would file Notices of Objection, as such assessments would not be in accordance with the law, creating additional delays for taxpayers and workload for the Appeals department.

The CRA's position also complicates financial statement disclosures for our member companies. IFRS requires tax liabilities to be presented based on legislation that is substantively enacted, while U.S. GAAP requires that legislation be enacted. The proposals included in the NWMM did not meet either threshold prior to prorogation, therefore the pre-NWMM inclusion rate of 50% must be used to record and present capital gains and losses for financial statement purposes, which is contrary to the CRA's guidance on how they intend to administer tax filings. This is creating serious issues in determining the right disclosure for public financial statements. In-house Tax Departments and Audit Committees are having to determine how to best disclose these changes and their impact on stakeholders.

We therefore make the following recommendations in the spirit of taxpayer fairness and certainty:

1. We recommend the CRA revoke any guidance suggesting taxpayers file based on an increased inclusion. We recommend any statement made by the CRA, given that the

current session of Parliament was prorogued and the uncertainty of when this legislation may be reintroduced, provide that the CRA will administer the capital gains inclusion rate based on the current law.

2. If the retroactive application of the rules becomes law, we recommend the CRA provide interest relief for those taxpayers impacted by these changes that have a filing due date on or before June 30, 2025, for taxes owed on the increase in capital gains inclusion amounts. By doing so the CRA reduces uncertainty among these taxpayers.
3. Finally, once Parliament has resumed and the opportunity exists, we encourage the CRA to consult with the Department of Finance regarding the reintroduction of the NWMM such that it is not presented as retroactive legislation (with changes effective June 2024), but rather a prospective effective date.

Unprecedented circumstances such as these require a unique approach from the CRA when administering proposed legislation to ensure fairness and certainty for taxpayers. We trust that our recommendations are received in good faith and that the government will take them into consideration as they continue to administer fair tax policy for all Canadians.

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Should you have any questions regarding the comments in this letter, please do not hesitate to contact Sandy Shanks, Chair of TEI's Canadian Income Tax Committee, at [Sandy.Shanks@ConocoPhillips.com](mailto:Sandy.Shanks@ConocoPhillips.com) or Benjamin R. Shreck of TEI's Legal Staff at [bshreck@tei.org](mailto:bshreck@tei.org) or 202.464.8353.

Respectfully submitted,

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TAX EXECUTIVES INSTITUTE

Cc: Rob Demeter, Department of Finance