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June 7, 2023

Suzanne Canning, Director General
International and Large Business Directorate
Canada Revenue Agency

Via email

RE: Draft Reportable Uncertain Tax Treatments Form

Dear Ms. Canning:

You asked for the views of Tax Executives Institute's, Inc. ("TEI") Canadian Income Tax Committee regarding a draft version of the new Reportable Uncertain Tax Treatment(s) ("RUTT") form. The RUTT form will be used to report tax positions for which the tax treatment is unclear under the relevant financial statements of the reporting taxpayer. On behalf of TEI, I am pleased to respond to your request for TEI's views.

About TEI

TEI was founded in 1944 to serve the professional needs of in-house tax professionals. Today, the organization has 56 chapters across North and South America, Europe, and Asia, including four chapters in Canada. Our over 6,000 members represent 2,800 of the world's leading companies, many of which either are resident or do business in Canada. Over 15 percent of TEI's membership comprises tax professionals who work for Canadian businesses in a variety of industries across the country. TEI members are responsible for tax affairs of their employers and must contend daily with provisions of the tax law relating to the operation of business enterprises. The following recommendations reflect the views of TEI as a whole but, more particularly, those of our Canadian constituency.

TEI Comments

Comments on Part 2 of the RUTT Form

Part 2 of the RUTT form is entitled "Relevant financial statements reflecting the corporation's reportable uncertain tax treatment(s)." Part 2 refers to RUTTs "shown" in the taxpayer's financial statements. The language of subsection 237.5(1) of the proposed legislation that would require this reporting, however, refers to the

RUTTs "reflected" in the financial statements of the taxpayer. We recommend the RUTT form's language be consistent with the proposed legislation for clarity.

International Financial Reporting Interpretations Committee ("IFRIC") interpretation 23 uses the term "reflect" in the context of recognition of an uncertain tax position in financial statements "if an entity concludes it is not probable that the taxation authorities will accept an uncertain tax treatment, the entity shall reflect the effect of uncertainty in determining the related taxable profit (tax loss), tax bases, unused tax losses, unused tax credits or tax rates." This uncertainty is recognized either in the year the tax event occurs or when facts and circumstances change. This suggests RUTT disclosure is only required when one of these two events occurs and therefore only in respect of tax events or changes in facts and circumstances that occur in taxation years that begin after 2022, given the proposed effective date of the legislation. TEI recommends the Canada Revenue Agency ("CRA") confirm this interpretation.

The RUTT form requires a taxpayer to report an uncertain tax position reflected in the financial statements of the reporting corporation or a consolidated group of which the corporation is a member. This suggests there may be multiple RUTT forms filed by members of a single consolidated group. TEI recommends that a single form be completed for the entire consolidated group with a column reporting each member's RUTTs.

Comments on Part 4 of the RUTT Form

Part 4 of the RUTT form is entitled "Reportable Uncertain Tax Treatment(s) reflected in the financial statements." Part 4 requires a taxpayer to describe each of its RUTTs by filling out several columns of information. One of these columns asks for the taxation year to which a RUTT pertains. The proposed legislation provides that a RUTT arises in the year in which the uncertainty is reflected in the financial statements. The notes to this section state: "The taxation year to which a RUTT pertains is the taxation year for the return of income or information return that the RUTT is used in or is planned to be used in or would be used in, if the return of income or information return was filed . . . ." We recommend that the notes include comments to clarify that the "year to which the RUTT pertains" can be a taxation year that is different than the year the uncertainty is reflected in the financial statements (e.g., change of facts in 2023 impacting a filing position from 2021, the uncertainty is reflected in 2023).

Another column asks taxpayers to list the provisions of the *Income Tax Act* (Canada), as amended (the "Act") that a taxpayer has relied upon. Under the proposed legislation, any "tax" within the Act is subject to the new RUTT disclosure rules. Thus, it seems that the RUTT disclosure rules do not apply to taxes that are not subject to the Act (e.g., GST, provincial taxes, non-Canadian taxes) even though uncertainties can be reflected in the financial statements for these taxes. We recommend the RUTT form clearly state which taxes the reporting obligations apply to and to which they do not.

The RUTT form also asks for a description of the relevant facts and the tax treatment taken. The form's instructions should clarify that these requests only apply to factual information and information reported in the tax return, not legal or other analysis.

Finally, the RUTT form instructions ask whether the CRA has provided an opinion or written communication regarding the relevant RUTT. TEI recommends the RUTT form's instructions clarify that the opinion or written communication referred to is one that has been provided to the reporting taxpayer in respect of the specific matter.

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TEI appreciates the opportunity to comment on the draft RUTT form. TEI's comments were prepared under the aegis of its Canadian Income Tax Committee, whose Chair is Steve Saunders of Atco. Should you have any questions about the Institute's comments, please do not hesitate to contact Mr. Saunders at Steve.Saunders@atco.com or Benjamin R. Shreck of TEI's Legal Staff at bshreck@tei.org or 202.464.8353.

Respectfully submitted,

Wayne G. Monfries
International President
TAX EXECUTIVES INSTITUTE