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Via email: [nicolas.colarusso@cra-arc.gc.ca](mailto:nicolas.colarusso@cra-arc.gc.ca)

**Re: Comments of Tax Executives Institute on Draft Form RC312**

Dear Mr. Colarusso:

TEI appreciates the opportunity to discuss our feedback on Draft Form RC312 – Reportable Transaction and Notifiable Transaction Information Return (the “Draft Form”) with you on January 23, 2023. The Draft Form and legislation, however, lack tax certainty, one of the hallmarks of a strong tax system. As discussed during our call, TEI has significant concerns regarding the level and types of information required by the Draft Form. These concerns include privacy issues regarding the information to be shared by taxpayers to advisors so the advisors can complete the Draft Form. TEI also believes that the Draft Form can be substantially simplified without compromising the quality of information required by the Canada Revenue Agency (“CRA”).

**About TEI**

TEI was founded in 1944 to serve the professional needs of in-house tax professionals. Today, the organization has 57 chapters across North and South America, Europe, and Asia, including four chapters in Canada. Our approximately 6,500 members represent 2,800 of the world’s leading companies, many of which either are resident or do business in Canada. Over 15% of TEI’s membership comprises tax professionals who work for Canadian businesses in a variety of industries across the country. The following recommendations reflect the views of TEI as a whole but, more particularly, those of our Canadian constituency.

As the preeminent association of in-house tax professionals worldwide, TEI is dedicated to the development of sound tax policy, compliance with and uniform enforcement of tax laws, and minimization of administration and compliance costs to the mutual benefit of government and taxpayers. TEI is committed to fostering a tax system that works—one that is administrable and with which taxpayers can comply in a cost-efficient manner. The diversity, professional training, and global viewpoints of our members enable TEI to bring a balanced and practical perspective to the legislative proposals discussed herein.

### TEI Comments

We understand that the CRA followed the Backgrounder<sup>1</sup> released by the Department of Finance concurrently with the legislation modifying the mandatory disclosure rules in developing the Draft Form. The concerns we raised on our call and previously<sup>2</sup> highlight our view that the overly broad draft legislation has led to an overly broad Draft Form. TEI urges the CRA to work closely with the Department of Finance to narrow the draft legislation to ensure that the reporting rules do not apply to ordinary business transactions, which are not in any way undertaken to “avoid” tax. Until the overly broad nature of the draft legislation can be resolved through legislative amendments, TEI recommends that the CRA provide clear guidance upon the release of the final form to that effect. As discussed during the call, taxpayers have serious concerns that the legislation covers simple, everyday transactions. These transactions could include share purchases with standard tax representations, warranties, and indemnities, or even Investment Tax Credits obtained through a contingency fee arrangement. TEI believes that these types of transactions, and many others, should be outside the scope of the mandatory disclosure rules.

Although we acknowledge that CRA is sympathetic to these concerns, the potential for substantial penalties for not reporting will cause taxpayers to overreport these standard transactions out of caution. Providing interpretive guidance at the time of release would: (i) help the CRA achieve its objective of obtaining relevant information regarding true “avoidance transactions” that meet the required hallmark(s); and (ii) avoid a massive influx of useless information. Retroactive guidance will not be helpful to taxpayers that need to file forms prior to the guidance being received. TEI supports the initiative to combat aggressive tax avoidance through reporting, but in a manner that is administratively feasible for both taxpayers and the CRA.

We understand that CRA’s objective with respect to the Draft Form is to obtain information about taxpayers’ “avoidance transactions” meeting the specified hallmarks. However, the Draft Form requests detailed, audit level information from taxpayers that will not be available or even known by the Draft Form’s reporting deadline. The unknown details of the transaction may include steps involved, pre-sale reorganizations, decisions to borrow and to what extent, as well as the “tax benefit.” For example, if

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<sup>1</sup> Available at <https://www.canada.ca/en/department-finance/news/2022/02/mandatory-disclosure-rules>.

<sup>2</sup> TEI’s letter regarding the legislation modifying the mandatory disclosure rules is available at: [https://www.tei.org/sites/default/files/tei\\_comments\\_re\\_income\\_tax\\_mandatory\\_disclosure\\_rules\\_consultation\\_final\\_4.5.22.pdf](https://www.tei.org/sites/default/files/tei_comments_re_income_tax_mandatory_disclosure_rules_consultation_final_4.5.22.pdf).

contractual protection as part of a share purchase agreement meets the third hallmark – which, upon reading the legislation as drafted, a transaction of this type would – most of the information a taxpayer would need to report within 45 days of signing the agreement would not be available and therefore have almost no value to CRA. Providing the CRA with incomplete and ultimately inaccurate information is not an efficient use of resources for either taxpayers or the CRA.

In TEI’s view, the Draft Form only needs to contain basic information identifying the reportable transaction and taxpayer, after which the CRA can audit the transaction. This would be a much more efficient use of resources for both taxpayers and the CRA and should still achieve the objective of identifying reportable transactions and combatting tax avoidance. TEI also believes that this approach is more in line with the spirit of the legislation. We recommend the form require basic information that is known and accessible to the person filing the form at the time of filing, with a short description of the transaction and a short description of which hallmark(s) is satisfied and why. Additional documentation about the transaction should not be required.

We are also very concerned about the serious privacy considerations raised by the Draft Form. The Draft Form implies that taxpayers must disclose all “advisors” to a transaction, which is very broadly defined, with an assessment of whether they are required to report along with additional information about that advisor. By asking advisors to complete the form to the best of their ability, the CRA is effectively compelling them to request information from other parties involved in the transaction. Much of that information is private and confidential and while information not subject to privilege can be shared with the CRA, it should not be expected that taxpayers using the Draft Form share this confidential information with advisors or other third parties involved in the transaction.

In relation to other parties involved in the transaction, nowhere else in the Income Tax Act is a taxpayer required to make a determination of obligations under the Act of another arm’s length taxpayer. Requiring such reporting on this form is improper and inconsistent with the general principles of a self-assessment system. It is not the responsibility of a taxpayer to make such a determination. TEI requests that Part 8 of the Form be eliminated.

TEI’s strong opinions on this form stem from the lack of clarity of what circumstances will trigger penalties under proposed subsection 237.3(8). We understand from our discussion with CRA that penalties will at least initially be determined by a separate CRA committee, which we take to mean that they will be applied carefully and sparingly. However, given the magnitude of the penalties and the frequency with which many TEI members engage in or advise on transactions that may meet the current definition of reportable transaction, TEI remains very concerned about the lack of tax certainty that the legislation and the form provide to our members.

In addition to the more general concerns raised above and during our call, TEI has also compiled some more specific comments on the Draft Form itself. These concerns are listed in Appendix A to this letter.

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TEI appreciates the opportunity to contribute to the development of CRA initiatives, including forms such as the Draft Form, in the effort to develop administrative processes that serve CRA's needs, while recognizing the challenges faced by large Canadian taxpayers. We look forward to further discussing our comments with you. Should you have any questions about TEI's submission, please do not hesitate to contact Steve Saunders, Chair of TEI's Canadian Income Tax Committee, at 403-801-4657 or [steve.saunders@atco.com](mailto:steve.saunders@atco.com).

Respectfully submitted,



Wayne G. Monfries  
*International President*  
TAX EXECUTIVES INSTITUTE

CC: Trevor McGowan, Director General, Tax Legislation Division, Tax Policy Branch,  
Department Finance

**Appendix A**

Please find below some more specific comments regarding the Draft Form.

(a) Page 1, Before Part 1:

This disclosure is in respect of:

A reportable transaction.....	<input type="checkbox"/>	Yes
A notifiable transaction.....	<input type="checkbox"/>	Yes
A reportable transaction and a notifiable transaction..... (in respect of the same tax benefit)	<input type="checkbox"/>	Yes

It is not clear how the check boxes are intended to be used and the implications associated with the third check box. Additional commentary in this regard would be helpful. In particular:

- The rules do not require reporters to advise whether a reportable transaction and notifiable transaction relate to the same tax benefit. If one entered into a transaction that was reportable and notifiable in relation to the same tax benefit, but only selected the first two boxes but not the third, would their submission be considered to be invalid?
- Is the assumption that you can only select one of the boxes?
- The last check box suggests that you should use the last box if there is a reportable and notifiable transaction in relation to the same benefit. What should be selected if there is a reportable and notifiable transaction but in relation to different benefits?
- Would there be a scenario where you would need to select all three boxes?

(b) Page 1, end of Part 1:

Check (✓) the box that applies to you and answer question(s) where applicable

<input type="checkbox"/>	- Person obtaining the tax benefit
<input type="checkbox"/>	- Person who entered into the transaction for the benefit of the person obtaining the tax benefit Relationship with the person obtaining the tax benefit: .....
<input type="checkbox"/>	- Advisor or promoter who is or was entitled to a fee with respect to the transaction Fees received or receivable, attributable to the transaction or series of transactions: ..... \$ .....
<input type="checkbox"/>	- Person who does not deal at arm's length with the promoter or advisor and who is or was entitled to a fee with respect to the transaction Fees received or receivable, attributable to the transaction or series of transactions: ..... \$ .....

Please provide a person's name to contact if we need more information:

- The options do not cover all the circumstances where someone is required to disclose. *E.g.*, assume a person is small shareholder of a corporation that is being acquired. The acquisition involves pre-acquisition tax planning, but the tax benefit does not accrue directly or indirectly to that small shareholder (due to the share structure). The acquisition agreement includes a tax indemnity. The small shareholder may be in a reportable transaction but none of the check

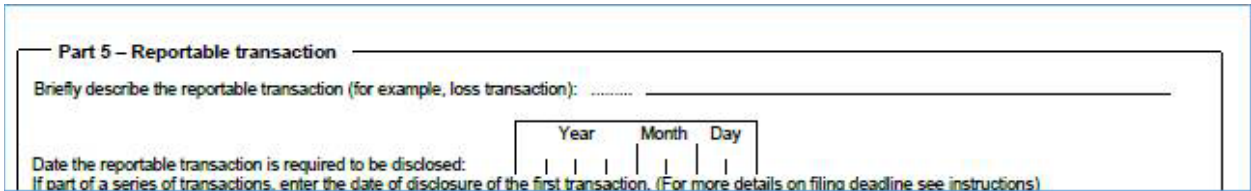
boxes apply such that they would not be able to complete that part. The form should include a “other” box or include additional options.

- (c) Part 2 Identification of person obtaining Tax Benefit – TEI recommends including a box to tick to say “same as above”
- (d) Part 3 - Calculation of the late-filing penalty: The amount of the tax benefit will often be unknown at time of filing the form, making it impossible to reasonably calculate the penalty.
- (e) Part 5 - Provincial information – taxpayers will file provincial forms as and if required. Provincial tax matters are beyond the scope of the federal legislation, which concerns a “tax benefit” as determined under subsection 245(1).
- (f) Part 5 - “Each of the main purposes”: There is no requirement in the legislation to determine or disclose each of the main purposes. The rules only require that one of the main purposes be to achieve a tax benefit. A brief description of the transaction or series of transactions indicating its main purpose is sufficient.
- (g) Part 6 – “Tax benefit obtained or being sought”: this amount and its nature will not always be known at the time of filing, as it will depend on factors that have yet to be finalized, such as interest rates, transfer prices, involvement of third parties, etc.
- (h) Part 6 – “Step-by-step description”: if structuring has not yet been finalized or even drafted, a step-by-step description will not be available at the time of filing.
- (i) Part 6 – “Series of transactions”: Since a “series of transactions” is so broadly defined, it is very difficult for taxpayers to precisely identify when the series begins and ends.
- (j) Part 6 and Part 8: reporters other than the taxpayer seeking the tax benefit do not have detailed information regarding the transaction other than their specific involvement, such that they will be unable to complete parts 6 and 8 in the level of detail requested. Where participants are disclosing due to peripheral involvement in the transaction but are not beneficiaries of the relevant transaction or structure, they would have minimal details of the transaction or series and would likely not have reference materials. Such disclosing parties may not even have sufficient detail for the Minister of National Revenue to understand the tax structure but elect to disclose in favour of over compliance instead of under compliance (so as not to trigger a penalty under subsection 237.3(8)) given the broad reach of the proposed rules. It would be unfair if the lack of supporting materials would invalidate a discloser’s filing where the discloser itself has very limited information to begin with. While they may believe they must file based on the information they receive and the broadness of the relevant provisions, they may not have the supporting information requested in this section of the form.



We recommend that Part 6 only be requested from the taxpayer seeking or obtaining the tax benefit.

- (k) Part 3; In many cases, certain advisors to the taxpayer seeking the tax benefit will not know the date the contractual obligation was triggered, making it impossible to know the filing deadline
- (l) Page 5, top of part 5 – The description area is needlessly limited. Additional space should be provided.



Part 5 – Reportable transaction

Briefly describe the reportable transaction (for example, loss transaction): .....

Date the reportable transaction is required to be disclosed: 

Year	Month	Day

  
If part of a series of transactions, enter the date of disclosure of the first transaction. (For more details on filing deadline see instructions).

- (m) Part 6 - Requirement to list ITA provisions avoided – this requirement is far too broad. Taxpayers likely have not considered all the provisions that apply to the transaction within 45 days, let alone every provision in the ITA that does not apply (is being “avoided”). This requirement is a strong example of the impracticality of the Draft Form.
- (n) Page 6, part 6, options A and B
  - It is not clear what information satisfies the requirement of “sufficient detail for the Minister of National Revenue to be able to understand the tax structure...”, and what information is a “nice to have” (such as the reference materials).
- (o) Part 8 requires taxpayers to identify every person required to file an information return. What is the purpose of the box “Tick if required to disclose”? By instruction, the reporter has already answered that question by listing the person. In addition, there is no need for the second box “Tick this box if involved in the transaction”. If the person is required to disclose, they are “involved”, unless “involved” has some other meaning for this purpose.