TEI-CRA INCOME TAX LIAISON MEETING
DECEMBER 7, 2021

A. Introduction

Question 1. Vision and Priorities for the CRA's International and Large Business Directorate

We invite the Director General of CRA's International and Large Business Directorate to provide an update including the CRA's thoughts on its priorities for the next 12 months given the continuing impact of COVID-19, and the vision for the future of the Directorate, as well as feedback on the role TEI can play in achieving that vision.

CRA response to question 1

This year, the International and Large Business Directorate (ILBD) faced many challenges, including continuing to adapt to the virtual workplace. It is expected that going forward, even after the pandemic, a lot of audit work will be conducted virtually. Conducting the necessary audit work virtually with full cooperation of the taxpayer will improve the audit efficiency and help reduce compliance burden where possible. As plans become clearer regarding what the future of the workplace might look like, the CRA would welcome input from TEI about what balance should be struck between in-person and online auditing.

ILBD also continues to be heavily involved in the CEWS Post-Payment Audit Program. So far, we have found that most large businesses are applying the CEWS rules correctly and making every effort to comply. It is anticipated that this audit work will be merged into existing income tax compliance audit efforts in the future. ILBD is using the results of these audits, which in effect are near real-time audits, to adapt best practices for our regular Large Business Audit program.

Current and future priorities have not changed for ILBD. We continue to work on:

- **Building and maintaining technical capacity** by recruiting and training new auditors. This is difficult in the new virtual environment but is also opening opportunities to hire from other regions.

- **Enhancing risk assessment capabilities** by improving our tools and approaches to receive and analyse more and more complex data.
    - We welcome input from TEI on how the process might be simplified and made more efficient.

- **Improving audit quality and sustainability of audit adjustments by** working to improve our HQ referral processes and providing updated guidance to taxpayers. We recently added a MAP and APA Review Committee (MARC) to strengthen internal controls within the MAP and APA programs, ensure consistent application of transfer pricing principles, and improve relationships with key stakeholders and tax treaty partners.

- **Reducing audit & file resolution timelines** by updating information request timelines and expanding the capacity for transferring files via the CRA portals.

- We also updated Information Circular (IC) 71-17 *Competent Authority Assistance under Canada's Tax Conventions* which provides general guidance for relief of double taxation.

We will continue to work closely with our stakeholders, including TEI, to implement these priorities to improve the compliance program, provide service whenever possible, and to ensure tax fairness within the large business population segment.

B. Pandemic Related Questions

Question 2. Communicating with the CRA

TEI member companies' businesses are becoming increasingly digital. The COVID-19 pandemic has accelerated the use of electronic communication, data storage, and remote work. Can the CRA update TEI on ways the agency is working to adopt similar technologies both internally and with taxpayers? TEI is willing to work with the CRA to help facilitate the use of these technologies with taxpayers.

A high degree of business communication is conducted through regular email especially considering the COVID-19 pandemic. Several TEI member companies had the opportunity to communicate with Audit and Appeals in this manner outside of the My Business portal. This facilitated efficient transfer of information and files and productive dialogue on issues. Many other federal agencies (including the Department of Justice and the Tax Court of Canada) regularly communicate with outside parties through e-mail. Is the CRA considering permanently continuing this program for large case Audits and Appeals?

CRA response to question 2

Security waiver

- The Branch responsible for the security waivers is currently in the process of reviewing the waivers related to the use of unencrypted email to determine next steps moving forward.

- No further decision at this point in time.

Two-way communication

- CRA introduced a two-way communications pilot integrated in our case management system which adds functionality not available with the temporary security policy waivers (e.g. monitoring/reporting, information management/preventing unwanted future contact).

- The solution is used as a last resort and with some limitations* due to the unencrypted nature of the service, we are seeking security enhancements to eventually reintroduce most if not all of the flexibility and conveniences the temporary security policy waivers have allowed us to take advantage of to facilitate efficient transfer of information and files.

*limitations include:
- Reliance on a consent process,
- The inability for Auditors to send attachments/documents,
- the inability to CC multiple recipients

- The CRA continues to expand the pilot by adding programs to the service, which will include the International and Large Business audit programs.

Secure Data Channel

- Secure data channel (SDC) project will improve the way business clients, third parties and other partners share data and files with the Canada Revenue Agency (CRA).

- The SDC project focuses on providing additional digital communication options through three digital initiatives: a secure drop zone (SDZ) channel, digitized inbound faxes (E-fax), and a Business-to-CRA/CRA-to-Business (B2CRA/CRA2B) channel

- Secure drop zone (SDZ) –
  - A secure, two-way channel allowing the CRA and third parties to digitally exchange information on an ad-hoc basis, outside the portals.
  - The external client only needs an internet browser to use this tool.
  - A CRA user will be able to create a temporary drop zone through which information can be sent and/or received. The external party will only require a cell phone, email address and access to the internet.
  - Phase 1 release will be early Summer 2022 (June).

- Business-to-CRA / CRA-to-Business Communication (B2CRA/CRA2B)
  - A secure two-way channel to be used for ongoing high-volume data exchange of information as required by CRA compliance or by agreements with other Government Departments (OGDs) and partners.
  - The external client will require file management tool / infrastructure like MFT as an example. This is for continues flow of data / documents and will need to be tailored.

- E-fax
  - An internal facing technology to digitize and store inbound faxes allowing them to be retrieved remotely in addition to the sustainable development benefit. This project is being delivered in partnership with the digital imagining centre in PSPC.
  - The external client only needs an internet browser to use this tool.

Secure Email

- The Agency is committed to augmenting our current digital service offerings by exploring alternatives to facilitate secure two-way communication outside of our portals with the level of security required to support the exchange of account specific data, Protected B information, between CRA and clients. In 2020 we started looking at secure email as a potential solution to

communicate with clients securely. We engaged partners in the public sector to explore possibilities and most recently we published a Request for Information as a means of garnering input from the private sector.

- We will be assessing that input along with input from public sector partners and research that we have conducted to try to identify a possible direction to move the needle on the use of secure email with clients.

Question 3. New Working Arrangements

a. Tax Exemptions

The CRA has indicated that where an Indian (as defined in the Indian Act) lives on a reserve and normally works off the reserve but is required to work at a home situated on a reserve due to the COVID-19 pandemic, that income will be treated as exempt. Post-pandemic, many employers will be shifting to hybrid work arrangements where employees *may* (but not necessarily be required to) work in a physical office certain days of the week and at home other days of the week. Will the CRA update its guidelines to capture these situations where an employee works part of the time from a reserve?

CRA response to question 3(a)

The employment income of an individual who is registered or entitled to be registered under the Indian Act is exempt from income tax under paragraph 81(1) (a) of the Income Tax Act and section 87 of the Indian Act, only if the income is situated on a reserve. The courts have established that determining whether income is situated on a reserve, and exempt from tax, requires identifying the various factors connecting the income to a reserve and weighing the significance of each factor. This is referred to as the "connecting factors test". To simplify the application of this connecting factors test with respect to common employment situations, the Canada Revenue Agency (CRA) together with other government departments and interested First Nations organizations, developed the Indian Act Exemption for Employment Income Guidelines (Guidelines).

The location where the duties of an employment are performed is one of the main connecting factors used by the Guidelines in determining whether employment income is exempt from tax under the Indian Act. Although the Guidelines do not make any specific reference to the location where an **employee is required by their employer to perform the duties of their employment**, it is the CRA's longstanding view that this is the most relevant location when determining where the duties were performed for purposes of applying the Guidelines. For example, if an employee is not required to, but performs their duties on a reserve as a matter of convenience, the employee will not be considered to have performed their duties on a reserve for purposes of the Guidelines. This view is reflected on Form TD1-IN, "Determination of Exemption of an Indian's Employment Income". For example, the heading of section 2.5 of the form states:

> "Employee does not live on a reserve and employer is not resident on a reserve but the employee is **required to perform duties on a reserve**." [Our emphasis]

Ordinarily, an express requirement under the terms of a written employment contract or a formal hybrid work arrangement would be necessary to show that the employee is required to perform their duties of employment from certain locations on a reserve, such as a home office. However,

although an arrangement may be voluntarily entered into, once an employer and an employee have entered into a formal hybrid work arrangement, the employee would be considered to be required to perform duties from the agreed location in the arrangement. The formal hybrid work arrangement need not be in writing provided the details of the arrangement are agreed to and clearly understood by both the employee and the employer. Whether such an arrangement exists is a question of fact and will depend on the circumstances of each situation.

b. Taxable Benefits

Late in 2020, the CRA provided alternative administrative guidelines with respect to home office equipment for individuals working from home and the ability to deduct their home office expenses. A significant amount work is still being conducted from a home office (i.e., not at the employee's regular workplace); little has changed since March of 2020.
Before the 2020 tax year, home expenses may be deducted where the individual principally performs the duties of their employment. Question 10 on Form T2200, *Declaration of Conditions of Employment*, asks the employer the following:

> Did this employee's contract of employment require them to use a portion of their home for work? (Note: This does not have to be part of the employee's employment contract and may be a written or verbal agreement between you and your employee)
>
> Yes or No. If yes, approximately what percentage of the employee's duties of employment were performed at their home office? State %

Almost all large employers will be incorporating more flexible working arrangements for many of their staff, even after restrictions are lifted. The most commonly discussed change is the ability for staff to work at home at least a few days per week. Some employees will continue to work at home on a permanent basis.

Please provide the CRA's current view on the following:

i) *Form T2200*

Because working from home will continue and the agreement between the employee and employer will vary in respect of the exact amount of time an employee will work in the office and at home, practically it will be difficult for employers to determine the exact percentage of time a particular employee works from home. Subsection 8(13) sets out the rule requiring an employee to perform their duties "principally" from home to claim office expenses, so it is submitted that the employee is responsible to meet this legislative requirement. Can the CRA provide some guidance on how the employer should complete the answers to Question 10 on Form T2200 in the case where an employee has the option to work from home and that time is not tracked by the employer?

CRA response to question 3(b)(i)

Generally, a salaried employee may deduct home office expenses under subparagraph 8(1)(i)(iii) of the Income Tax Act ("Act") if the conditions in that subparagraph, and those in subsections 8(10) and (13) of the Act are satisfied.

Subparagraph 8(1)(i)(iii) of the Act allows for the deduction of work-space-in-the-home expenses (i.e., supplies consumed directly in the performance of the duties of employment), where an employee was required by contract of employment to supply and pay for those expenses, the expenses are reasonable, and the employee was not provided a reimbursement by their employer for these expenses.

It is the general position of the Canada Revenue Agency that when an employee and employer have entered into a formal work arrangement, the employee is "required by contract of employment" to provide a work space in their home and pay for some additional costs associated with providing this work space. While the actual agreement can take many different forms (for example, a verbal agreement, an e-mail from the employer confirming the agreement, or a formal written agreement initiated by either the employee or the employer), what is critical is that the details of the work arrangement are agreed to and clearly understood by both the employee and the employer.

Subparagraph 8(13)(a)(i) of the Act provides that expenses which are otherwise deductible under subparagraph 8(1)(i)(iii) of the Act cannot be deducted as work-space-in-the-home expenses unless the work space is the place where the employee principally (i.e., more than 50%) performs their duties of employment.

Where the conditions in subparagraph 8(1)(i)(iii) of the Act are met by an employee, subsection 8(10) of the Act further requires that Form T2200, Declaration of Conditions of Employment, be completed and signed by their employer to certify the conditions of employment. However, a signed Form T2200 does not provide an employee with any assurance that the expenses incurred are deductible, since the Act contains other criteria that the employee must satisfy.

With regard to the completion of Form T2200, Question 10 asks that an employer approximate the percentage of the employee's duties of employment that were performed at a work space in their home. An employer is not asked to certify whether this work space was the place where the employee principally (i.e., more than 50%) performed their duties of employment.

As the nature of work arrangements and the manner in which they are documented will differ by employer, an employer should use the method which best aligns with their practices and procedures to collect the information needed to respond to Question 10 on Form T2200.

c. Conduct of Audits

Going forward, how will the CRA's approach to auditing Large Corporations take into consideration corporate employees that only work in the office periodically? Will audits be conducted remotely by the CRA if employees of audited corporations are working from home?

CRA response to question 3(c)

The COVID-19 pandemic has forced the Canada Revenue Agency to adapt its in-person audit practices in response to various health and economic impacts and considerations. While we consider that the on-site element is an important component of the audit process, as noted in our first response, it is anticipated that the amount of in-person time at the taxpayer's premises will remain limited with the majority of the audit work conducted virtually. This will be achieved through the use of enhanced electronic data capture, analysis, transmission and communication processes, including the recently

expanded file types formats that can be sent to taxpayers electronically. The CRA will endeavor to ensure that the audit is efficient and effective, while respecting the adapted environment and its evolving conditions.

Question 4. Meal Allowances/reimbursements

As many employees are working remotely, training workshops and other work-related meetings take place virtually and are primarily for the benefit of the employer. Providing lunch to employees while they are physically in the office at a work meeting is not a taxable benefit. These meeting are still critical to running the business, even though employees attend virtually. Employers may provide employees with a meal voucher (e.g., lunch) from UberEats or a similar voucher/credit because the meetings happen during the lunch time hours. Alternatively, such events may infrequently take place outside of work hours.

The CRA's current policy is that cash or near cash, such as a gift certificate, is a taxable benefit. Because the meetings are primarily for the benefit of the employer, vouchers in these situations could arguably not be a taxable benefit. The following questions examine scenarios to ascertain a better understanding of the CRA's view on this matter.

a) Does the CRA consider such vouchers/credits a taxable benefit to employees?

b) If yes, would the CRA consider an exception such that meal allowances of up to $23, consistent with the amount the CRA views as reasonable for purposes of overtime meals and allowances, for townhalls, rewards and recognition ceremonies, and other similar events would not be considered a taxable benefit?

c) If the vouchers/credits could only be used within a certain timeframe (e.g., day or within another specified time frame of the event), would the voucher/credits still be considered a taxable benefit to employees?

d) If the vouchers/credits could only be used in relation to limited items predetermined by the employer (such as providing only three options, and the voucher/credit could only be used for one of the three options), would the vouchers/credits not be considered a taxable benefit to the employee due to the employee's relative lack of choice and the CRA's existing policy regarding meals at in-person meetings?

e) If the vouchers/credits could only be used within a certain timeframe ***and*** were restricted to limited items predetermined by the employer, would the vouchers/credits not be considered a taxable benefit due to the employee's lack of choice and limited opportunity for use based on the CRA's existing policy regarding meals at in-person meetings?

f) Would the CRA's views differ based on whether vouchers or credits are provided?

CRA response to question 4(a)

CRA's policy is that cash or near cash benefits provided to an employee, such as a gift certificate, are a taxable benefit.

Given that the vouchers or credits are providing a benefit that functions as cash or near cash, we would consider these credits or vouchers as a taxable benefit to the employees. Our taxable benefit relief policy due to the restrictions imposed during the COVID-19 pandemic does not provide for considering cash and near cash benefits as not giving rise to a taxable benefit.

CRA response to question 4(b), (c), (d) and (e)

Our policy for providing hospitality in the context of a work-related event was not extended to cover the use of vouchers or credits in the context of virtual events. A cash or near cash benefit as you have described would remain a taxable benefit and the exception for overtime meals and allowances would not be applicable.

CRA response to question 4(f)

So long as the voucher or credit functions as a cash or near cash as per our published definitions, the vouchers or credits would remain a taxable benefit and their treatment would not be distinct.

Question 5. Regulation 102

Pursuant to Paragraph 102(1) of the Income Tax Regulations, employers are required to withhold tax on any payment of remuneration made to an employee where the employee reports for work at an establishment of the employer. If an employee does not report to work to any establishment, the employer is required to withhold where the payment is made. The terms “report to work” is not defined in either the Income Tax Regulations or the Income Tax Act.

The CRA, in its Technical Interpretation 2015-062082117, made similar comments with respect to the expression “reports for work”, which can be found in paragraph 102(1) of the Income Tax Regulations. The CRA stated in the technical interpretation:

> The CRA has not established any specific criteria for purposes of determining whether an employee reports for work at an establishment of the employer. However, we can clarify that the physical presence of the employee at a location for purposes of carrying out his or her regular duties is an important factor to take into account in establishing whether the employee does or does not report for work at an establishment of the employer. This location will generally be one where the employee produces reports or analyses and receives direction or information on the tasks he or she must perform.
>
> It is important to note that even though an employee is not required to carry out his or her tasks at an establishment of the employer on a daily basis, this will not in itself exclude the possibility of this location being considered an establishment to which the employee reports for work. However, in our view a recurring physical presence for purposes of carrying out the tasks assigned remains necessary in this regard. Generally, the CRA will consider a weekly presence for the equivalent of one typical work day of an employee at the employer's establishment for purposes of carrying out the employee's normal workload to be sufficient to reach the conclusion that the employee reports for work at the employer's establishment. However, an employee whose only physical presence at the employer's establishment is limited to attending a few meetings or

> information sessions in the course of a given year will not be considered to report for work there.

The CRA's Guide T4001, *Employers' Guide – Payroll Deductions and Remittances*, states:

> If your employee reports to your establishment in person, the employee's province or territory of employment is the one in which your establishment is located. There is no minimum amount of time the employee must report to that place….
>
> Example 3 Your employee works from a home office in Alberta, but occasionally must report to your Alberta office. You pay your employee from your head office in Ontario. Use the Alberta Payroll Deductions Tables since the employee sometimes reports to your Alberta office….
>
> If your employee does not have to report to your establishment in person (for example, the employment contract says the employee works from a home office), the employee's province or territory of employment is the one from where your employee's salary and wages are paid.

In interpretation letter 12-016413-001, Revenue Québec made the following comments on the meaning to be given to the expression "reports to work":

> Revenu Québec considers that the expression "presents itself" has a physical connotation. This implies that the employee must physically report to an establishment of his employer. We are of the opinion that this physical presence must have a recurring nature in that an employee who has limited contact with an establishment of his employer does not appear there.

In a 2018 Round Table, Revenue Québec added the following to the interpretation of terms "report to work": (free translation)

> Like the CRA, Revenu Québec is of the opinion that a weekly presence of 7 hours, equivalent to a typical work day, is sufficient to conclude that an employee reports to an establishment of the employer. . However, Revenu Québec is also of the opinion that the number of hours could be less without necessarily concluding that the employee does not report to an establishment of the employer. This is why Revenu Québec considers it reasonable to reduce the criterion of the typical working day to half a working day, i.e. more than 4 hours per week.
>
> Thus, to be considered as reporting to his employer's establishment, an employee must physically present himself there on a recurring basis. To this end, an employee would be considered to report to his employer's establishment on a recurring basis if he attended a half-day of work per week, i.e. more than 4 hours.
>
> On the other hand, when the employee does not meet the half-day criterion during all work weeks, but meets it for at least 90% of his time, he will still be considered to report to his employer's establishment. If, for the weeks of work in which he does not meet

> this criterion, it was justified (question of fact). For example, the employee works for his employer abroad or takes training outside his employer's establishment.

Many employers have amended their work-home policy during the pandemic. Therefore, these employers now allow employees to work from home on a full or part-time basis.

Would the CRA consider issuing specific guidance on the meaning of reporting for work at an establishment of the employer to cover an employee working full or part time from home?

CRA response to question 5

The meaning of "reporting for work at an establishment of the employer" is currently under study by the CRA.

Question 6. Electronic Signatures

The CRA issued the guidance below on electronic signatures on March 28, 2020. The guidance has been met with some confusion by taxpayers and by the CRA's Business Enquiries line. It is unclear from the CRA statement below as to whether electronic signatures are viewed as acceptable for all requirements of the Income Tax Act, and for greater certainty also the Form T183, *Information Return for Electronic Filing of an Individual's Income Tax and Benefit Return*, and Form T183CORP, *Information Return for Corporations Filing Electronically*, or if this guidance was intended to apply only to the T183 and T183CORP. Several other CRA sites specifically point to allowing electronic signatures (i.e., Canada Emergency Wage Subsidy, Scientific Research and Experimental Development ("SR&ED")). Can the CRA clarify the scope of the March 28, 2020 statement? The statement reads:

> CRA and COVID-19
>
> Effective immediately, the CRA will recognize electronic signatures as having met the signature requirements of the Income Tax Act. This temporary measure will reduce the necessity for taxpayers and tax preparers to meet in person and will reduce administrative burden during this difficult time.
>
> This provision applies to authorization forms T183 or T183CORP, which are forms that are signed in person by millions of Canadians every year to authorize tax preparers to file taxes.

Use of electronic signatures is increasingly common to conclude contracts and other legal documents. Guidance from member companies' internal and external legal counsel is that these signatures are generally accepted as valid and binding. Given the now wide use of electronic signatures in business interactions, will the CRA extend its acceptance of them permanently?

> CRA response to question 6
>
> The Canada Revenue Agency (CRA) is very pleased to work closely with key industry stakeholders to make sure that taxpayers have access to high-quality products and services to meet their needs and expectations. Budget 2021 proposed to eliminate the requirement that signatures be in writing on certain prescribed forms, as follows:

- Forms prescribed under the *Income Tax Act (ITA)*:

    - T183, *Information Return for Electronic Filing of an Individual's Income Tax and Benefit Return*;
    - T183CORP, *Information Return for Corporations Filing Electronically*;
    - T2200, *Declaration of Conditions of Employment;*
    - T2200S, *Declaration of Conditions of Employment for Working at Home Due to COVID-19*
    - *NEW for the filing season starting in February 2022*, the T183 Trust, *Information Return for the electronic filing of a Trust Return*

- Forms prescribed under the *Tax Rebate Discounting Act (TRDA)*:

    - RC71, *Statement of Discounting Transaction*; and
    - RC72, *Notice of the Actual Amount of the Refund of Tax*

There are currently administrative measures in place for the existing ITA forms listed above and we plan to continue to offer these administrative measures until legislation is proposed and Royal Assent is received. However, as the forms under the TRDA involve the assignment of a refund, we do not have any plans to offer administrative measures for electronic signature on the discounting forms until Royal Assent has been received.

The CRA continues to evaluate the legislative provisions, privacy, and security considerations associated with signatures on other forms. As a result, the broader application of electronic signature has not been extended to other forms for individuals and trusts at this time.

Question 7. International Tax Issues

On May 19, 2020, the CRA published guidance on International Income Tax Issues arising from COVID 19 in respect of 2020 income tax obligations. At last reading, the guidance was still only applicable until September 30, 2020. Given that travel restrictions have changed very little since September 2020, will the CRA extend this guidance to be applicable for 2021? This would be consistent with OECD Guidance issued on January 21, 2021, as noted in the "Updated guidance on tax treaties and the impact of the COVID-19 pandemic" (see paragraphs 28–30 of the OECD document). More specifically, will the CRA agree that where a director of a foreign corporation was required participate in a board meeting from Canada because of travel restrictions during the COVID-19 pandemic, the CRA will not consider the corporation to become resident in Canada solely for that reason provided that the Canadian parent company can demonstrate that any changes in established practices of a foreign affiliate's board meeting attendance are attributable to the impact of COVID-19 on foreign travel?

CRA response to question 7

The Agency previously addressed this question in May of 2021 at the annual conference of the Canadian chapter of the International Fiscal Association. At that conference we stated that the administrative relief for corporate residency was not going to be extended beyond the original date of September 30, 2020 but that we would continue to consider residency determinations and questions surrounding central management and control on a case-by-case basis. This continues to be the case.

C. Other Technical Questions

Question 8. Administration of Requirements of Stock Option Rules

Designations Under Subsections 110(1.4) and 110(1.42) of the Income Tax Act

Subsection 110(1.4) allows a qualifying person to designate one or more securities as non-qualifying securities over and above what the formula in subsection 110(1.31) determines. Subsection 110(1.42) allows a qualifying person to designate an order of agreements that were entered into at the same time. What manner(s) of designation will the CRA consider acceptable for purposes of each of these subsections?

CRA response to question 8

There is no provision in the legislation which sets out the manner(s) of designation that are acceptable for these purposes. This is currently under review by the CRA.

Notification to Employees

Under paragraph 110(1)(e), the employer must meet the notification requirements in subsection 110(1.9). In this regard:

a) Paragraph 110(1.9)(a) requires that the employer notify the employee in writing that the security is a non-qualified security no later than 30 days after the day that the agreement is made. Will the CRA accept electronic notification of employees, such as through email or online platforms used to administer employee stock options?

   CRA response to question 8(a)

   This is currently being reviewed by the CRA.

b) Paragraph 110(1.9)(b) requires the employer to notify the Minister in prescribed form that the security is a non-qualified security on or before the filing-due date for the taxation year of the qualifying person that includes the time that the agreement is entered into. Will the CRA be issuing a prescribed form? If so, when will the form be made available?

   CRA response to question 8(b)

   Schedule 59, Information Return for Non-Qualified Securities will be the prescribed form for this purpose. The Schedule 59 will be ready for publication in the Spring 2022.

Question 9. Employer Stock Option Deduction re: Partnerships

With respect to the employer deduction, the Department of Finance's Explanatory Notes state that corporate partners may be eligible to claim the stock option deduction in some circumstances involving employees of partnerships. Accordingly, to the extent that a benefit from a non-qualified security is included in a partnership employee's taxable income (in accordance with section 7), a corporate partner

may be eligible to claim a paragraph 110(1)(e) deduction in computing its taxable income, depending on the facts.

Could the CRA further expound on its views as to when corporate partners are eligible for the paragraph 110(1)(e) deduction, or provide examples of circumstances in which corporate partners of a partnership would or would not be eligible to claim the deduction in respect of employees of the partnership?

CRA response to question 9

For any given year, one of the requirements for the application of paragraph 110(1)(e) is the existence of a benefit deemed by subsection 7(1) to have been received by an employee of a particular employer in respect of non-qualified securities.

In the context of a corporate partnership, for the purposes of section 7, and by extension, the provisions in subsection 110(1) pertaining to employee stock options, it is the CRA's longstanding position that an employee of a partnership is an employee of each partner, unless there is evidence that the employee is solely employed by one partner.

Thus, the fact that an individual is an employee of a partnership should not, in and of itself, preclude the application of subsection 7(1) to stock options granted to such an employee by one of the corporate partners, and should also not preclude the availability of a deduction under paragraph 110(1)(e).

The Income Tax Ruling Directorate would be pleased to consider the issue further in the context of a request for an advance income tax ruling.

Question 11. Paragraph 69(1)(b) and FAPI

Consider a situation where a Canadian taxpayer sells a foreign investment to one of its foreign affiliates ("FA") for consideration less than fair market value ("FMV"). Under subparagraph 69(1)(b)(i) the taxpayer is deemed to have received proceeds of disposition equal to that FMV and realizes a capital gain. On the other hand, the ACB of the foreign investment in FA is the actual consideration paid (i.e., there is no adjustment for FMV).

Consider that the foreign investment is not "excluded property" (as this term is defined under subsection 95(1)) of FA.

In the same year, FA sells the foreign investments to a third party at FMV. FA realizes a capital gain which is included in its foreign accrual property income ("FAPI") under clause B of the term's definition at subsection 95(1). Correspondingly, the taxpayer includes the amount of the gain in its income under subsection 91(1) (assume no foreign accrual tax).

In such a case, would the CRA apply subsection 248(28) to prevent double taxation, considering that the taxpayer has already included a capital gain in its income in respect of the investment under subparagraph 69(1)(b)(i)?

CRA response to question 11

We understand that the foreign investment disposed of sequentially by Canco and CFA is capital property for both of them and not shares of another foreign affiliate of Canco, such that subsections 85.1(3) and 85.1(4) do not apply to those transactions.

Also, where a taxpayer and a non-resident person with whom the taxpayer does not deal at arm's length enter into a transaction or a series of transactions, subsection 247(2.1) provides an ordering rule for the purpose of applying subsection 247(2).

The Technical Notes that accompanied the introduction of paragraph 247(2.1) stated that:

> Subsection 247(2.1) is added in order to clarify the interaction of subsection 247(2) and the other provisions of the Act. The subsection provides an ordering for the application of the transfer pricing adjustments in the context of the provisions of the Act.
>
> Paragraph 247(2.1)(a) provides that where the conditions in the opening words of subsection (2) and its paragraph (a) or (b) are met, a taxpayer or partnership is first required to determine each of the amounts (referred to in subsection 247(2) as the "initial amounts") that would be determined for the purposes of applying the provisions of the Act if the Act were read without reference to section 247 and 245.
>
> Paragraph 247(2.1)(b) then provides that the quantum or nature of the initial amounts are adjusted to give rise to the amounts referred to in subsection 247(2) as the "adjusted amounts". These are the amounts that would be determined if the assumptions in paragraph 247(2)(c) or (d), as the case may be, were true.
>
> Lastly, paragraph 247(2.1)(c) provides that each of the provisions of the Act, other than subsection 247(2) and, for greater certainty, including the general anti-avoidance rule in section 245, are to be applied using the adjusted amounts. This ensures that the rule embodying the arm's length principle is a rule of general application.

Subsection 247(2.1) requires that the application of the transfer pricing rules in subsection 247(2) precede the application of other provisions of the Act.

In the situation submitted, the application of paragraph 247(2)(c) in respect of Canco would result in the proceeds of disposition of the foreign investment being adjusted to correspond to an arm’s length amount for the purpose of applying the provisions of the Act in respect of Canco, including section 69 which might require a further adjustment for the purpose of applying the provisions of the Act.

On the disposition of the foreign investment by CFA, an amount corresponding to the capital gain considered to be realized by CFA would be included in the FAPI computation of the CFA for its relevant taxation year. This would result in an amount being included as income from the shares of CFA in computing Canco’s income for its relevant taxation year under paragraph 12(1)(k) and subsection 91(1).

Considering that the gain on the disposition of the foreign investment by Canco and the FAPI inclusion are amounts from distinct sources, subsection 248(28) would not apply.

D. Follow-up Questions and Carryover Items from Prior Years

Question 13. Technology at the CRA

As with previous liaison meetings, TEI invites the CRA to provide an overall update regarding its efforts to improve the online experience for corporate taxpayers, including the following:

a) *Disruptions in Online Services* – Would the CRA consider adding a listing of current online service outages to the CRA My Business portal? It would be helpful to businesses using the services if such a notification included a list of services that are down, an expected timeline for when the services will resume, and the ability to request an email notification when the services have resumed. It would also be helpful if taxpayers could report service issues through the portal, instead of having to phone the general help line.

CRA response to question 13(a)

During a planned CRA outage for My Business Account (and all other CRA portals), CRA informs taxpayers of the specific service outages on the CRA website. Information banners are added to the My Business Account webpage and other affected services. Included in the banner is a link to the Service maintenance details webpage that provides a table outlining the list of services that are unavailable and expected timelines for when they will resume. At this time there is no email notification in place to advise taxpayers of outages. However, banners are added to the webpages in advance of the outage in order to inform taxpayers. The CRA also posts general outage information on the Hours of Service webpage.

b) *Follow-up to 2020 Liaison Meeting - Implementation of access to the non-resident account information by taxpayers through My Business Account* – During the 2020 Liaison Meetings, the CRA indicated that they would provide an update in 2021 on this service improvement suggestion. We would appreciate an update on whether taxpayers can expect changes to the CRA portal to add the following types of non-resident accounts to My Business Account services:

i) Non-Resident withholding accounts, typically starting with “NRX” or “NRJ”, used by Canadian corporations to withhold taxes from payments to non-residents.

CRA response to question 13(b)(i)

Non-resident tax accounts are currently not accessible through existing CRA portals (My Account, My Business Account, and Represent a Client). The CRA is actively exploring opportunities to improve client services by expanding digital services to NR tax account holders and their representatives. Analysis is underway to find and implement an authentication solution for individuals needing to access NR accounts online but who cannot use the CRA’s current model of identity proofing.

ii) Business accounts for non-resident taxpayers who have not previously filed a Form T2, *Corporation Income Tax Return*.

CRA response to question 13(b)(ii)

The CRA does not currently have a process to identify an individual who wishes to use our online services but who does not file personal income tax and benefit returns.

Registration for My Business Account is done by authenticating the individual user and requires that the individual provide their Social Insurance Number or Individual Taxation Number, date of birth, postal code/zip code and an amount entered on their individual income tax and benefit return. (It could be from the current tax year or the previous one).

However, we recognize the value in providing digital services and we continue to actively explore options to implement digital offerings to non-resident taxpayers who do not file individual tax returns.

c) *Follow-up to 2020 Liaison Meeting - Improved tracing ability for transfers of money between accounts* – During the 2020 Liaison meeting, the CRA indicated that it anticipated adding functionality to My Business Account in 2021 to display payment transfers between taxation years and between accounts or extensions. Can the CRA provide an update on this initiative?

CRA response to question 13(c)

The CRA transfer tracing functionality enhancement was implemented in May 2021.

All transfers between business accounts are now displaying additional information in the "View account transactions" and "Customize view of transactions" services in My Business Account.

Transfers between business accounts now include the period-end, a 2 character program identifier, and a 4 digit reference number in the transfer display. This information will help businesses identify which period-end and account was involved in the transfer of funds.

The CRA appreciates any feedback received and will continue to improve on the display functionality of the transactions tables within My Business Account.

d) *Additional detail for Payroll, SR&ED, and Non-Resident Withholding Tax ("NR WHT") Reassessments* - Reassessments issued by the CRA for Payroll, SR&ED, and NR WHT accounts currently provide minimal details. Taxpayers must then phone the CRA to understand the cause of the Reassessment and to understand how the revised amounts have been determined. This is not an efficient use of CRA or taxpayer resources. Would the CRA consider adding additional details to Payroll, SR&ED, and NR WHT Reassessments, such that taxpayers have sufficient information to understand what has triggered the reassessment and how the change in tax has been calculated?

CRA response to question 13(d)

NR WHT – The CRA will undertake a review of the explanation verses used on the Non-Resident Tax Notice of Reassessment in order to assess options for providing clients with more information about what lead to the reassessment, and how the change in tax has been calculated.

Payroll – For payroll, CRA will issue a PD7D - notice of assessment when non-compliance events occur. However, prior to an assessment being generated, the employer would have received and responded to a notice, sent CRA additional information, and/or been contacted by CRA making the employer aware of an impending assessment and of the reason why. In addition, if the assessment is as a result of a trust accounts examination (TAE) or an employer compliance audit (ECA), the employer is supplied with a detailed explanation of the exam and audit results before the assessment is issued, similar to the T7W-C referred to below for corporate assessments.

Note that payroll does not reassess or provide a reassessment as the Agency does in other revenue lines, although we will make adjustments to assessed amounts if new information is brought forward. From an employer's point of view, and given what they might receive from other revenue lines, this could be perceived as a reassessment.

We certainly appreciate the feedback and will take this opportunity to see if improvements can be made to our assessment letters.

e) *Tax Attribute Carryover Detail by Year of Origination* – TEI members would find it very helpful if the CRA added tax attribute carryover detail to the CRA My Business Account, including the year of origination and expiry. This information would be useful for taxpayers to be able to reconcile their records to the CRA's records for carryforward balances such as Net Operation Losses, Capital Losses, Charitable Donations, SR&ED credits, and corporate minimum tax ("CMT") losses and credits. Currently the CRA's assessments only include the total balance of these attributes, such that taxpayers must work with CRA personnel to obtain a break-down of the balances by year. It would be more efficient for both the CRA and taxpayers if an updated balance by year of origination and expiry were available in the CRA My Business Account. Is this a service improvement that the CRA can implement in the near future?

CRA response to question 13(e)

The CRA continues to offer enhancements to the My Business Account (MyBA) portal to improve the online experience for corporate taxpayers. Most recent updates include:

MyBA View Return screens were enhanced as follows:

- Improvement to the ordering and display of the T2 return and schedules to more closely resemble the taxpayer's experience with the T2 corporate income tax return
- For initial assessments, taxpayers can now review their reported value alongside the current assessed value
- For reassessments, taxpayers can now review the previous assessed value and their reported value for that particular reassessment, alongside the current assessed value

MyBA View Return Balances and Special Elections were reorganized as follows:
Capital dividend account (CDA) balance and Capital gain and loss amount screens were moved to the View special elections and returns (SER) section of MyBA in order to facilitate navigation between elections (i.e. T2054) and related balances (i.e. CDA).

Regarding the specific question posed by the TEI, the closing (carry forward) balances for several items are currently available on the View return balances screen. Providing taxpayers with these amounts on a historical basis is an extremely complex integration of data within the MyBA system, but we recognize this would be a desirable service for taxpayers. TEI's recommendation to enhance balance displays, including items currently not displayed (i.e. Charitable donations, SR&ED credits, CMT balance) will be forwarded to our development team for consideration.

In 2022, there are planned enhancements to our MyBA application display and functionality for View and pay account balance, View direct deposit transactions and the Enquiry service forms. MyBA enhancements are publically shared on the My Business Account – What's new Canada.ca webpage and on publically distributed tax guides. My Business Account - What's new - Canada.ca

Question 14. ***Data analysis***

Multinational corporations increasingly encounter different approaches to the application of technology by tax authorities around the world in how they access and analyze taxpayer data for audit purposes. Given the shared desires of government and taxpayers to bring audits current and see them conducted more efficiently, can the CRA comment on its current processes and what it intends to change in the next 2 to 5 years?

CRA response to question 14

As previously noted the CRA continues to prioritize the reduction of audit & file resolution timelines:

- Updated information request timelines;
- Expanded capacity for transferring files via the CRA portals; and continue to
- Work on improving headquarter referral process

In addition the CRA is contemplating an Interim Tax Audit Protocol for the risk assessment of large public companies, who have processes in place to ensure that financial reporting for an entity are, within the limits of materiality, free of financial error and that controls over the production of financial reporting information are effective. The CRA would examine the books and records of the interim reporting cycle that are readily available and incorporate these into the risk assessment and audit process of a large public company on a contemporaneous basis. A review of these records at this stage, which in most cases would already exist at the time of request, would assist large corporations in meeting their tax obligations and assist the CRA in ascertaining such, under the respective Acts administered by the CRA, as well as reducing any uncertainties with respect thereto to the Taxpayer and the CRA. To the extent that there exists a significant transaction\structure\issue that would require further examination, CRA could conduct a real-time audit of that specific transaction\structure\issue.

The results from CEWS Post Payment Audits (which are real-time audits) are being used to adapt best practices for our regular Large Business Audit program. A real-time audit can occurs when CRA conducts an audit of specific issues before the taxpayer files the corporate tax return but after the specific

transactions are undertaken. Historically this was done at the request of the taxpayer. Going forward the CRA could identify potential candidates for a real-time audit coordinated by the International and Large Business Case Manager. A real-time audit would require full disclosure of all transactions and related information on the part of the taxpayer, including disclosure of uncertain tax positions contained that would be contained in the taxpayer's tax accrual working papers. A real-time audit would provide the taxpayer with immediate tax certainty on certain transactions\structures\issues.

The CRA also continues to work on digitizing and improving income tax Special Elections and Returns (SER) forms, which will:

- support the government's efforts to offer fully electronic interactions by allowing CRA to data capture and accept e-filing of more than 45 of these forms;
- improve taxpayer service with more timely access to important information, for example, allowing corporate taxpayers to view Capital Dividend Account information through My Business Account in real time; and
- target compliance efforts and proactively detect, and discourage abusive tax avoidance transactions by leveraging the newly digitized data into existing risk assessment tools and processes.

Question 15. Benefits and Allowances Received from Employment

Since October 2017, Income Tax Folio S2-F3-C2, *Benefits and Allowances Received from Employment*, has been under review and the CRA has directed employers to follow current practices consistent with the information available in Guide T4130, *Employers' Guide - Taxable Benefits and Allowances*. In response to TEI's December 2018 question on this subject, the CRA indicated that it had reviewed and revised the folio's wording with respect to employee discounts on merchandise, but that the revised folio continued to undergo additional review pursuant to internal CRA procedures. TEI invites the CRA to provide an update regarding the status of this additional review and the projected release

CRA response to question 15

The folio is currently in the process of review and approval in accordance with CRA internal procedures. A projected release date for the updated folio cannot be provided at this time.

During the approval period, the CRA continues to administer employee discounts on merchandise in accordance with the administrative policy outlined in Guide T4130, Employers Guide – Taxable Benefits and Allowances, which is currently available on the tax pages of the Canada.ca website.

Question 16. CRA Technology - My Business Account – Changing Company Representatives

TEI commends the CRA in its efforts to improve services offered through My Business Account, while balancing the need to safeguard taxpayer information against fraud and misuse.

Several TEI members are experiencing difficulties when changing company representatives and their relevant access to My Business Account. We understand that the CRA has been working with CPA Canada on various initiatives to improve the representative authorization processes, including a "Confirm my Representative" option.

a) Will the "Confirm my Representative" option will be available for large corporate taxpayers?

CRA response to question 16(a)

Yes, the Confirm my Representative option is available for large corporate taxpayers.

Please note, that in these large corporation situations, a level 3 delegated authority may also authorize a representative or another delegated authority on behalf of the business.

We are open to meeting with TEI to discuss the larger question of authorizations.

b) For many TEI members, the corporate executives providing the authorizations do not have access to My Account or My Business Account. Therefore, the new option described in question (a) above would not be available to them. Currently, the CRA's process of contacting corporate executives by phone is not practical either. Certain TEI members have discussed these challenges with their Large Business Case Managers ("LBCM"), and some LBCMs would be willing to play a role to streamline the process if they could provide assistance. Would the CRA be interested in working with TEI to explore various options addressing the needs of large corporate taxpayers?

CRA response to question 16(b)

The CRA would be interested in working with TEI to explain the options currently available to large corporate tax payers and explore how to respond to these challenges moving forward.

Question 17. Collection Process

TEI members often have not only several program accounts (i.e., RT, RP, RC, RE, RM) but also several sub-accounts (i.e., RP0001, RP0002) within the same Business Number. When an amount is owed under any program account or sub-account, the CRA proceeds immediately and automatically with transfers from one account or sub-account to the other without notification to the taxpayer.

This often results in a need to reconcile balances in each account and the sub-accounts. Often there is a delay between when these transfers are completed and visible to the taxpayer. As discussed in our follow-up to the 2020 Liaison question, the proper tools are not yet available to the taxpayer to transfer amounts online to manage discrepancies. Taxpayers must call the CRA to ensure the transfer is completed. Occasionally this can result in the need for further reconciliations if the incorrect extension is adjusted.

Furthermore, the immediate and automatic transfer does not permit taxpayers to pay only 50% of the amount owed under a reassessment if the taxpayer desires to file a notice of objection. In such a situation, getting a refund from the CRA after the immediate and automatic transfer of funds between accounts and sub-accounts is a complex process.

To avoid the above-mentioned issues and simplify the process for the CRA and TEI members, if the CRA was to issue a payment notice, similar to other vendors, prior to the transfer (for example, 30-day notification and payment period), it would give the taxpayer an appropriate amount of time to pay

outstanding debts or notify its intent to appeal the reassessment and pay 50% of the amount owed. Would the CRA consider changing its practice of automatic transfers between accounts and sub-accounts?

CRA response to question 17

We understand the concern and have considered the suggestion but making such a change is not feasible. In contrast to other vendors, the CRA administers public funds and even if the proposed system change to delay the automated transfer process were allowable, there could be risks of credits being refunded instead of the legal set-off taking place. In addition, the proposed system changes would be very complex and costly particularly if such logic would only apply to specific entities. Such a change could also have interest implications for the taxpayer in a negative manner. However, to assist in such situations, as detailed in our response to Question 13, there are now tools available in My Business Account that allow for the viewing or transferring of credits between certain accounts.

Follow-up to Question 17

(i) TEI is asking to delay allocation/offset process for 30 days **after** the audit reassessment (NOR issued). Will a payment notice be issued to allow the tax payer to **potentially** file an appeal?

CRA response to follow-up to question 17(i)

We consider the NOA/NOR a payment notice.

(ii) There is a comment that CRA processes transfers without **notification** to the taxpayer. Does CRA issue a notification when transfers are completed?

CRA response to follow-up to Question 17(ii)

Transfers are viewable in MyBA and a SOA is available upon request.

E. Administrative Matters

Question 18. Competent Authority and the APA Program

TEI members have commented on perceived changes in the advanced pricing agreement ("APA") program experienced over the past few years, and more acutely during the pandemic. TEI acknowledges the challenges presented by remote working arrangements, virtual meetings, and site visits on both the Agency and taxpayers engaged in processes as complex as the APA. In addition, TEI acknowledges the challenges that turnover and staffing changes within the Competent Authority can create in the administration of the program in a consistent manner, especially considering COVID-19 related issues.

Recently received member comments indicate that taxpayers looking to renew an existing APA – or enter the program for the first time – are receiving extremely detailed requests for information in response to the taxpayer's submission of the request for a Pre-File meeting that have, in the past, been reserved until only after acceptance in the program and receipt of the Cost Recovery Letter. This 'front-end loading' of data prior the opportunity for a pre-file conference is concerning to members as it is a

significant burden on staff and is beyond what traditionally represented the requirements for the CRA to consider whether to accept a taxpayer into the program.

TEI would appreciate the opportunity to receive comments on, and discuss the status of, the APA program, and changes to the Competent Authority and its approaches over the past two years and any change to strategic direction introduced by the new Director General.

CRA response to question 18

The APA program is a proactive service offered by the CRA to assist taxpayers in preventing transfer pricing disputes that could otherwise arise in future tax years. The CRA's Competent Authority Services Division (CASD) in the International and Large Business Directorate, Compliance Programs Branch administers the program. The main objective of the program is to provide increased certainty regarding future transfer pricing issues in a manner consistent with the *Income Tax Act* and guidance delivered through the CRA's information circulars and by the Organisation for Economic Co-operation and Development (OECD).

APA agreements do not set precedents for future cycles. Additional information gathered, or analysis performed, may suggest a different approach in subsequent cycles. Competent authorities are not precluded from giving a second look to an APA agreement when faced with an APA renewal application. Further, early engagement ensures that the potential concerns will be addressed in the taxpayer's application. In addition, it assists taxpayers in making a decision as to proceed with the APA process or not before investing substantial resources in preparing their complete APA application.

The Director of CASD ("the Director") is actively involved in these files, often meeting with taxpayers and their representatives. The Director is also part of discussions at the OECD's FTA MAP Forum, Identifying Improvements to the bilateral APA process.

The CRA's CASD is happy to discuss concerns with representatives and provide additional assistance to support requests for information.

Question 19. Timeliness of Appeals: Impacts of the Pandemic and the TCAD Risk Referral Process

We invite the Director General to provide an update on the CRA's efforts to improve the timeliness of determining taxpayer objections to original reassessments. In particular:

a) The pandemic has caused much disruption in the efforts of many businesses to effectively satisfy pre-pandemic objectives. We recognize the impact this may have had on the CRA appeals division to reduce the inventory of objections currently on appeal. Can the CRA provide some commentary on the impact (if any) this has had on the efforts to improve timeliness of review of taxpayer objections at the appeals level?

b) Section 4.5.5.1 of the Appeals Manual describes a Risk Referral process to the Tax and Charities Appeals Directorate ("TCAD"), which applies to new objections received after April 1, 2016, and where the objection involves an issue with $10 million or more in federal income taxes or GST/HST in dispute. Pursuant to section 4.5.5.1.1 of the Appeals Manual, for objections subject to the Risk Referral process described in 4.5.5.1, each CRA office is required to send an

additional “Follow-up on Risk Referral” to TCAD if there is a proposal to vacate or vary 50% or more of the tax in dispute.

TEI would appreciate hearing CRA’s comments on the intended purpose of this process, the volume of such referrals sent to TCAD, the average time to complete this review (measured from first date of receipt by TCAD to the date of final return to the CRA office), and what, if any, client service standards have been established with respect to this timeline.

CRA response to question 19 (a) and (b)

As may be recalled from the December 2020 conversation, 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, as well some objections handled by specialized teams. Since July 2020 the objections program resumed the full delivery of its operations. Also we had previously spoken about work to centralize the intake and screening of specific workloads. That started in August 2020 and we are continuing to explore opportunities to identify and refer issues that need to be reviewed by specialized teams as early as possible in the process. The CRA has also added resources to address the increasingly workload of high-complexity objections.

In terms of TCAD activities, the closure of the Tax Court of Canada and the corresponding impact on our litigation work has enabled us to deploy efforts toward complex objection matters. This focus on objections during the pandemic period has improved timeliness. Given that TCAD is dedicated to dealing with high-risk, complex matters, this together with the increase in resources devoted to our work is further enabling a reduction in timelines. We have also expanded and are reorganizing our operations to consolidate issues and taxpayer types by team.

There are mandatory referrals that are made to TCAD for a variety of criteria; but in all cases they are for the primary purpose of assuring integrity and consistency
in the handling of issues. In terms of the specific referrals you have mentioned, they too are to ensure that all complete considerations have been made for material issues. Where there is satisfaction that all appropriate due diligence has been undertaken, these referrals are ordinarily turned around in under 30 days but if additional measures are required, additional time may be necessary.

Question 20. CRA Phone Lines

During the most recent tax season, some TEI members expressed frustration with having phone calls cut off by several CRA phone lines, including the main phone line and some Tax Services Offices. Phone calls were cut off either because the wait was too long, or because the phone call had extended past CRA’s office hours.

a) Can the CRA share what is being done to address long wait times during busy season? Holding for hours and then having the line go dead without being able to leave a message is very frustrating.

CRA response to question 20(a)

Due to ongoing circumstances related to COVID-19, the CRA is experiencing higher than normal call volumes and extended wait times. Callers are provided an opportunity to access to a suite of self service options, or to speak directly to an agent by making a selection from the menu to be routed to an agent appropriately trained in the subject matter they are calling about. Our call agents continue to address many complex situations for Canadians who have had their economic situation impacted by the pandemic, which often requires more time for each call and limits the total number of callers we can speak to.

Despite these challenges, the CRA is taking concrete steps to improve its telephone service and reduce wait times to speak to an agent. This includes hiring additional agents to handle the increased call demand. The Individual Tax Enquiries, Benefit Enquiries, and Business Enquiries phone lines now have extended hours of service beyond filing season, and is open Monday to Friday 8am to 8pm (local time) and Saturdays from 9:00 am to 5:00 pm, local time.

To help TEI members make an informed decision on the best time to call, the CRA has published wait times online. at canada.ca/cra-telephone-numbers.

b) We have noticed that the CRA has improved some phone lines by adding a call-back option. Does the CRA have plans to add a call-back service to all phone lines and if so, what is the timeline?

CRA response to question 20(b)

In order to help improve the caller experience, the CRA recently introduced a callback function on the Business, Individual Tax and Benefit Enquiries lines. Callbacks are offered during peak periods, and are dependent on criteria such as wait time, number of calls waiting, and number of agents available. When all criteria are met, callers will be presented with a callback offer after opting to speak with an agent.

c) When dealing with an urgent and critical issue, TEI members appreciate having the option to remain on hold even when wait times are very long. Would the CRA consider discontinuing the practice of cutting off phone calls when wait times are long, so that taxpayers have the choice of remaining on the line?

CRA response to question 20(c)

The CRA does not intentionally cut off phone calls when wait times are long. That said, during periods of high demand during the pandemic, we have occasionally experienced technical problems with the telephone system with callers are using mobile phones or when wait times are extraordinarily long (in excess of 4 hours).

Question 21. NRRN Numbers

The CRA has steadily been increasing the capabilities of the MyBusiness portal to handle taxpayer needs, including large corporations. MyBusiness accounts are limited to Canadian residents with a RepID or U.S. residents who have a Non-Resident Representative Number ("NRRN"). TEI invites the CRA's comments on the following points.

Location of NRRN applicants

NRRN numbers are currently limited to individuals living in the United States. Large corporations and multi-national enterprises are finding this limitation restrictive given how companies operate, especially for shared services that support global operations and are often located in countries outside of Canada or the United States.

It may be helpful to broaden eligible non-resident representatives to include non-US individuals to better align with the geographic dispersion of large multinationals

Can the CRA provide comments with respect to expanding the non-resident representative access to the CRA MyBusiness portal?

CRA response to question 21 (Location of NRRN applicants)

The CRA is open to exploring expanding the non-resident representative access to the My Business Account portal. Our online portals are constantly being improved and the CRA works hard to keep them secure and easy to use. We are continuously taking steps to ensure we are protecting taxpayer information and providing the best service to taxpayers.

NRRN Application Process

NRRN certification requires that supporting identify documents be certified by local officials. TEI members have encountered situations when U.S.-based staff submitted notarized (by a U.S. notary) copies of identified documents that were rejected by the CRA since the documents weren't "certified." Notarization provides a high degree of comfort that copies are accurate compared to various forms of certification (e.g., from a doctor or someone similar). Notarization could also be more convenient for companies that have in-house law departments and/or notaries.

Can the CRA confirm whether notarized identity documents are acceptable for NRRN purposes and if not, what forms of certification are acceptable? If notarized documents are not allowed, can the CRA update the instructions to clearly state they are not acceptable to minimize delays and cost?

CRA response to question 21 (NRRN Application Process)

The CRA can confirm that we do accept notarized identity documents but the notary must stamp and sign in original ink the copies of Identity documents.

We will review our instructions to ensure that these requirements are clearly stated.

Question 22. Residency Certificates

Canadian residents entitled to relief from foreign taxes under one of Canada's tax treaties are often required to provide foreign tax authorities ("FTAs") or financial intermediaries (e.g., banks, brokers, custodians, etc.) with a certificate of residency ("Residency Certificates") issued by the CRA to establish their entitlement to treaty benefits. In some instances, FTAs insist that the Residency Certificate be provided by the CRA using the FTA's forms ("Foreign Forms"). Currently, the process for obtaining a Residency Certificate involves TEI members mailing or faxing a request for a Residency Certificate (a

"Certificate Request") to the relevant Tax Service Office ("TSO") serving their region which request is processed and sent to the taxpayer. CRA advises taxpayers to allow at least ten weeks for such Certificate Requests to be processed.

In response to a question at the 2018 Liaison meetings, the CRA indicated that questions relating to residency certificates can be made to the Business Enquiries line, as agents are equipped to handle such enquiries.

However, in recent years, taxpayers have expressed frustration with the process for Certificate Requests. TEI members who experience significant delays in receiving Residency Certificates, who receive Residency Certificates with mistakes, or who simply fail to receive their requested Residency Certificates have no point of contact at the CRA to inquire as to the status of their Certificate Requests or to raise concerns with respect to Certificate Requests. Such taxpayers have no recourse but to mail or fax a further Certificate Request and hope that whatever problem gave rise to the original delay, error or delivery failure will not be repeated. This is burdensome for taxpayers and creates additional work for the CRA, since TSOs may find themselves processing multiple requests for the same Residency Certificates.

These concerns could be largely mitigated with some improvements to the process for obtaining Residency Certificates, including:

a) providing a mechanism for taxpayers to obtain the status of their Certificate Requests (e.g., request has been received, request is being processed, certificate has been mailed, etc.) – this could be as simple as adding a feature to my business account or ensuring that CRA call center agents can access the status of Certificate Requests, if taxpayers or their representatives call; and

b) providing taxpayers with a mechanism to seek redress in the event of any problems with their Certificate Requests (e.g., excessive delay, errors in Residency Certificates or Residency Certificates which have been sent but not been received) – again, this could something as simple as specific email address, fax address or voicemail box for taxpayers to raise concerns with respect to existing Certificate Requests, which the CRA would undertake to respond to in a timely fashion.

In that light, what process improvements, such as those proposed above, might the CRA consider improving the taxpayer experience with respect to Residency Certificates?

CRA response to question 22 (a) and (b)

In order to improve services for correspondence requests, the CRA is reviewing its current intake processes, including those for Certificate of Residency requests, to increase digital options for taxpayers. For example, CRA is in the early stages to onboard some of these services to online portals - My Account, My Business Account and Represent a Client - to allow for electronic submission of requests.

In the event of delays or other issues, our contact centre agents have access to confirm and view the status of Certificate of Residency requests. Alternatively, follow-up requests can be submitted via fax to the Regional Correspondence Centres.

Question 23. Distribution of Filed Information

It has been noted by several TEI members that the CRA will often request attachments that were previously provided on filing. The most common examples are financial statements of foreign affiliates that have already been attached to a Form T1134, *Information Return Relating To Controlled and Non-Controlled Foreign Affiliates*, or supporting schedules attached to a Form T2. Auditors have indicated to TEI members that they either do not have access to these documents or cannot see them in the format in which the information is provided to them. A more seamless flow of information that does not require duplication of tasks by taxpayers, especially those as cumbersome as compilation of physical copies of multiple financial statements, would be an improvement.

What process improvements are available to the CRA to ensure that auditors have access to the information that taxpayers have filed, such that taxpayers are only required to file the information once?

CRA response to question 23

While it may appear at times that the CRA requests attachments that were previously provided on filing, in some cases the financial statements attached to the T1134 do not represent the complete set of financial statements and do not provide the CRA with sufficient information in order to proceed with the audit. The annual unconsolidated financial statements and the accompanying notes are requested when this is the case.

In order to reduce requests from auditors, taxpayers should ensure to attach a complete set of unconsolidated financial statements (annual financial statements and accompanying notes) for Foreign Affiliates and Controlled Foreign Affiliates, as per the instructions on the form. In addition, taxpayers should indicate all information on the T2 schedules instead of directing auditors to attachments.

In certain situations, paper tax returns or paper foreign reporting forms are required. While the CRA makes every effort to obtain all paper filings in a timely manner, the Covid-19 pandemic made this process challenging due to limited access to CRA offices. Once the paper filings are received, they are scanned into the CRA's Foreign Reporting Requirements Management System for auditors to access.

Unfortunately, taxpayers cannot use the "My Business account" to upload required Financial Statements for Forms T1134. However, Corporations and Partnerships can attach supporting documentation related to EFILED Foreign Reporting Returns, via certified tax preparation software with the Submit Electronic Documents Service. As of December 2021, **Profile** (Intuit), **Gemini** (Wolters Kluwer's), **Taxtron Web** (Taxtron), **TaxCycle** (Trilogy) and **FutureTax** (Futureca) software products currently support the Submit e-Docs Service functionality of attaching a foreign affiliate's unconsolidated financial statements and other supporting documentation to an electronically filed T1134. **VisualTax** (Microsophic), **Taxtron Mac** & **Taxtron Win** (Taxtron), **QB tax** (Profile), **EM Mac** (Tax Express) are also in the process of being certified for this service soon. The Submit e-Docs Service will be mandatory for all software supporting T1134 forms by December 2022.

The number of foreign affiliates who currently e-file their financial statements along with the T1134 is low; however, it is anticipated to increase with the Submit e-Docs Service becoming mandatory by December 2022.

The maximum file size for eService's Submit e-Docs was increased from 150MB to 350 MB in October 2021, and we are looking to increase it to 2GB in the near future.

Question 24. Electronic Files and Electronic Filing of Slips

TEI has two questions related to the online transfer of information to the CRA:

a) The submission of electronic files to the CRA through My Business account can be a cumbersome process. Currently every file uploaded needs to be tagged with a file description and a start and end date. There is also a ten file and one gigabyte limit per submission. As the CRA moves toward more electronic submissions, what efforts are being made to improve systems to make the submission process less cumbersome?

TEI members have been working with Audit and Appeals to determine how best to share information and transfer large files. What is the CRA's view on the use of a large file transfer platform, virtual data rooms or a web-based collaboration tool such as SharePoint for taxpayers to share information with CRA auditors / Appeals officers?

CRA response to question 24(a)

Please refer to CRA's response to Question 2. Communicating with the CRA

b) When electronic filing, there are often limitations to the number of digits allowed on information slips, such as Form T5013, *Statement of Partnership Income* slips, being submitted electronically. This limit forces taxpayers to "split" their slips into several slips with reconciliations to ensure the correct total amounts are being reported. Has the CRA considered system improvements that would increase the number of "digits" their systems can process when filing electronic returns?

CRA response to question 24(b)

The CRA is examining this issue through its system modernization project. While significant updates are planned over the next few years, specific information cannot be shared until the detailed planning phase is completed. Until then, splitting the fields that require more than 11 digits is the only option for those few affected.

We currently provide assistance and guidance on this issue on a case-by-case basis through our electronic processing support line at 1-800-665-5164.

F. Audit/Appeal Matters

Question 25. Oral Interviews

The 2021 Federal Budget included a proposal that gives the CRA the power to compel oral interviews of taxpayers. An issue with oral interviews is that they can lead to misunderstandings caused by language difficulties, simple miscommunications, confusion regarding the CRA's questions, and a lack of

understanding by the CRA auditor of the company operations or company-specific jargon. The potential for a misunderstanding is especially high for large corporations, where there is significant complexity and most individual interviewees are exposed only to a very small piece of the operations.

a) Does the CRA have a standardized process for oral interviews to ensure that they are conducted in a fair, consistent, and impartial manner which will take into account possible misunderstandings? If there is a standardized process, can the CRA share the particulars? If there is not a current process, would the CRA consider putting one in place? TEI members have a vested interest in this issue and would like to assist CRA in developing such a process.

b) When oral interviews are held, a best practice may be for the CRA to provide written questions at least ten working days in advance to assist the taxpayer with ensuring that the appropriate people attend the interviews. Similarly, the CRA could share the names and positions of all CRA staff attending the interview, with taxpayers doing the same once it is determined who is attending. Would the CRA be willing to adopt these practices?

CRA response to question 25 (a) and (b)

The CRA carries out a range of service, education, audit and enforcement activities to ensure compliance with tax laws and to maintain the integrity of Canada's self-assessment tax system. To this end, CRA auditors must take into account three key considerations when evaluating the need to request information from a taxpayer, either orally or through written queries: audit scope; relevancy and reasonableness; and transparency. The administration of any tax program relies upon its ability to obtain verifiable assurances that the information and returns filed by taxpayers are both accurate and complete. Transparency and cooperation by CRA officials and by taxpayers will facilitate the efficiency and effectiveness of a review or audit. Where possible, CRA officials will clearly identify the transactions, processes, claims, assets or issues they are reviewing as early as possible to the taxpayer whose affairs are under review. This will provide transparency to the process and enable the timely production of relevant information and documents. Due to the variety of compliance activities and factual circumstances that CRA undertakes, the oral interview process cannot be standardized. However, CRA auditors will structure interviews to discuss points at issue in such a way that the parties have the attention and time required to explain their positions. Where possible, the CRA official will identify the CRA staff attending when the interview is being arranged.

Question 26. CbC Reporting – Auditor Training

a) Can the CRA provide insights into the number or percentage of large business international tax auditors who have followed Country-by-Country ("CbC") report training to ensure that the CbC report is being used within the appropriate constraints?

b) Can the CRA provide an approximate number of CbC reports (Form RC4649, *Country-by-Country Report*) which were filed directly with the CRA for the FY2019 year?

CRA response to question 26(a) and (b)

The CRA respects its international commitments regarding the appropriate use criteria for Country by Country (CbC) reporting, which is limited to:

- high level transfer pricing risk assessment
- assessment of other BEPS related risks
- economic and statistical analysis, where appropriate

As such, the CRA has established controls surrounding access and use of this information by its audit community. All employees who request access to these reports must demonstrate they have completed the training on appropriate use. In addition, all international tax auditors, case managers and team leaders were required to complete the training by September 15, 2021. We continue to monitor completion rates for this training as new employees join these ranks.

Concerning multinational enterprise groups filing CbC reports for fiscal periods ending in 2019 with Canada, the CRA has received approximately 250 such reports annually.

Question 27. ***Referrals***

TEI members have had negative experiences when trying to escalate technical issues that CRA auditors/team leads have been reluctant to address or refer to subject matter experts. Rather, many auditors are issuing notices of reassessment and forcing taxpayers to use the appeals process. Given the well-documented backlogs in the appeals division and the requirement to pay 50% of the resulting tax upon reassessment, taxpayers are frustrated with the additional costs and time they must incur to resolve issues that could have been handled much more efficiently. Can CRA comment on how taxpayers can be assured that requests for a referral to a subject matter expert or other department are considered at the appropriate level?

The CRA's goal is making audits more current and achieving tax certainty as quickly as possible. However, TEI members are experiencing delays in the completion of audits due to the long delay in responses to Headquarter referrals by the audit division, requiring waivers to be granted by such members for extended periods of time. Can the CRA comment on the backlog within Headquarters and how the issue is being addressed to achieve the CRA's goals? When the CRA makes referrals to other federal departments and agencies, what is the CRA's process for communicating the details and recommendations of these inquiries back to the taxpayer, especially in situations where the referral request is made by the taxpayer? When referrals are made for consultation with other departments or agencies, is there a requirement for the CRA to follow the recommendations received from the referral?

CRA response to question 27

(*Clarification from TEI regarding this question:*

The TEI specified that the question is stemming from audit situations, where taxpayers disagree with auditors and wish to resolve a matter timely before a reassessment is issued. As they are large corporations, a reassessment triggers cash outlay for 50%. What TEI had in mind was situations where a subject matter expert may be needed to resolve a tax issue.)

Large File audit teams have a number of technical support areas available to assist in arriving at CRA's views on an issue arising during an audit. These may be called upon at any stage as an audit progresses prior to issuing a proposal letter on the issues but also after receiving representations in response to a proposal. These supports include the ILBD HQ areas responsible for Legislative Applications, Industry

Specialists, Regional Avoidance and International Advisors, but also includes Legal Services Branch, Department of Justice counsel support at the audit stage and Income Tax Rulings Directorate. There are also mandatory referral processes to HQ for the application of the General Anti-Avoidance Rule and Transfer Pricing Penalties, the National Early Warning System (NEWS) to notify HQ of significant audit issues, and the oversight provided by the Audit File Resolution Committee in regard to significant formal offers of settlement at the audit stage. Having said this, we continue to look at our HQ referrals processes to see if they can be streamlined and improved.

In resolving the question of whether the audit team should refer the matter in question to one of these areas, the taxpayer should take up the question with the case manager and failing an agreement, follow normal escalation of the concern with TSO management. Where a resolution is not reached, the applicable HQ area in International and Large Business Directorate would be engaged.

After engagement within CRA, the conclusions reached which result in a reassessment would be informed by consultations with the areas providing input and it recognized that issues involving complex arrangements and sophisticated planning might result in differing views within CRA but also among tax advisors. The TSO audit team is responsible for communicating the CRA's views on matters arising during the course of an audit. The administrative practice requesting representations, which provides time for a taxpayer to respond to a proposed reassessment at the audit stage, and where agreement cannot be reached, is followed by statutory recourse rights which allow taxpayers to object and subsequently appeal. Each of these stages recognize that differing views can exist, including through the court process.