

TEI-CRA INCOME TAX LIAISON MEETING DECEMBER 6, 2022

A. Introduction

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

We invite the Director General of the International and Large Business Directorate at the CRA to provide an update that includes the CRA's thoughts on the Agency's priorities for the next 12 months, the vision for the future of the branch, and feedback on the role TEI can play in achieving that vision. In addition, could the Director General also please comment on how the CRA plans to utilize the additional funding of \$1.2 billion announced in the 2022 Federal Budget, as well as how the CRA allocated the \$2.2 billion provided to the CRA since 2016? Does the CRA have statistics measuring whether the intended returns on these expenditures are being achieved?

CRA response to question A1

This year, the International and Large Business Directorate (ILBD) continued to adapt to the virtual workplace. As expected since last year, almost all audit work has continued to be conducted virtually. As the CRA continues to evolve in its hybrid approach to audits, with the increased use of technology we are now able to achieve significant audit work without being at the taxpayer's place of business. Meetings can be completed virtually and documents can be exchanged electronically. CPB administers a variety of audit programs, and as a result there will be program-specific considerations. Therefore, the right combination of in-person, on-site versus remote audit activities will vary by program. The CRA welcomes TEI perspectives regarding in-person and virtual auditing.

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

1. **Building and maintaining technical capacity** and implement effective succession planning strategies within the program, both in HQ and in the regions, through training and learning, effective employee development programs and targeted staffing. and new and enhanced policy, procedures and tools to ensure clarity, consistency and efficiency in our work.
2. **Enhancing risk assessment capabilities** on an ongoing basis. These enhancements are done by using and improving our automated systems, leveraging business intelligence, including all available data sources, and constantly improving the integrity of our data & recognizing that missing data constitutes risk.
3. **Improving audit quality and sustainability of audit adjustments by** working to improve our HQ referral processes and providing updated guidance to taxpayers. This includes engaging subject-matter experts and counsel at audit stage when required and collaborating with the Department of Finance and the Legislative Policy and Regulatory Affairs Branch in working groups. ILBD has also taken on a larger role in collaborating in the earlier stages of form design with the Department of Finance.
4. **Reducing audit and file resolution timelines (audit cycle time)** remains a priority for ILBD. Audit and file resolution timelines continue to be reduced by reviewing and finding efficiencies in our internal processes, as well as developing an early tax certainty protocol.

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.

As a result of budget investments of over \$1 billion between 2016 and 2019, the CRA has increased its ability to identify and target aggressive tax planning, especially more egregious cases. These investments target complex tax schemes in areas such as offshore tax evasion and the underground economy. It is estimated that these incremental investments have already delivered over \$6.5¹ billion in additional federal tax revenues assessed as of March 2021.

¹ Tax Earned by Audit (TEBA) is comprised of federal income tax adjustments for the years audited plus future years' adjustments discounted to the net present value and the value of GST/HST recoveries plus third-party, transfer pricing and gross negligence penalties.

The \$2.2 billion in funding from Budgets 2016 to 2019 was allocated to both the Compliance Programs Branch and the Collections and Verification Branch to expand our compliance efforts in many sectors including:

- Large businesses
- High Net Worth Individuals
- Aggressive Tax Planning
- Offshore transactions
- Tax Scheme Promoters
- Underground Economy
- Real Estate transactions especially in the Vancouver and Toronto markets
- GST/HST aggressive tax planning and fraudulent refunds
- GST/HST filing compliance

Federal Budget 2022 provides funding for the CRA to expand audits of larger entities and non-residents engaged in aggressive tax planning. This includes those in the medium sized economic entities with total annual revenues between \$20 million and \$250 million.

B. Administrative Matters

Question 1. OECD BEPS Pillars 1 and 2 Progress

a. Pillar 2

Could the CRA please comment generally on the work they have done on Pillar 2 to date?

In addition, could the CRA comment on the:

- (i) method and timing of the GloBE Information Return for Pillar 2;
- (ii) expected content for the Pillar 2 form;
- (iii) notification requirements for constituent entities of an ultimate parent entity or Designated Filing Entity for Pillar 2;
- (iv) payment obligations/deadlines under Pillar 2;
- (v) interest and penalties for over and under paid tax;
- (vi) time limits for auditing and self-correcting returns; and
- (vii) potential for expansion of exchange of information agreements with other jurisdictions (Qualifying Competent Authority Agreements per Pillar 2).

CRA response to question B1a

The CRA has set up a new Pillar Two Implementation Section to lead the implementation of the administrative aspects of this new tax measure. Initial deliverables include form development, establishing filing requirements and guidelines, and developing business requirements for IT system development (for returns processing and tax assessment).

Timing of the GloBE Information Return for Pillar Two is expected to be consistent with what has been provided under Article 9.4.1 and Article 8.1.6 of the Model Rules issued by the OECD on December 20, 2021.

The other administrative aspects for Pillar Two, including any method of filing for the GloBE Information Return, notification requirements, payment obligations and deadlines, interest and penalties for over and under paid tax and time limits for auditing and self-correcting return are expected to be included in the draft implementing legislation, which the CRA expects would be publicly released for consultation with sufficient time for comment before the rules are finalised and come into effect.

b. Pillar 1

TEI invites CRA to comment on the Government of Canada's planned compliance regime for the OECD two-pillar approach. Could the CRA please comment generally on the work they have done on Pillar 1 and / or the Digital Services Tax to date?

CRA response to question B1b

Pillar One

The OECD's work under Pillar One – Amount A has so far produced two Progress Reports for public consultation, released in July and October of 2022, respectively. The immediate goal of the Task Force on the Digital Economy (TFDE) is to finalize the Multilateral Convention (MLC) and have it ratified by a critical mass of countries by the end of the first half of 2023 so that Pillar One can come into force in 2024.

The CRA is actively engaged in the ongoing work on Amount A at the OECD and particularly in the TFDE, which is responsible for the development of the Model Rules and related commentary as well as the MLC and its associated Explanatory Statement.

The CRA is also heavily involved in the work on Pillar One – Amount B, which aims to establish a streamlined arm's length pricing mechanism for baseline marketing and distribution activities (BMDA), with a particular focus on the needs of low-capacity jurisdictions. The ongoing work on Amount B includes efforts to define scoping criteria; and develop and analyze arm's length pricing methodologies.

Digital Services Tax

The Digital Services Tax (DST) was announced in the 2020 Fall Economic Statement, further details were presented in Budget 2021 and the government's commitment to the DST was reiterated in Budget 2022. As noted in the Budget 2022 Supplementary Information, the DST could be imposed as of January 1, 2024, but only if the multilateral convention implementing the Amount A tax framework has not come into force. (In that event, the DST would be payable as of 2024 in respect of revenues earned as of January 1, 2022.

The proposed DST Act was tabled as a Notice of Ways and Means Motion in December 2021 for public consultation.

In preparation for the potential implementation of the DST, the CRA has started developing guidance for taxpayers, relevant filing forms, and has identified IT system enhancements required for implementing the DST based on the proposed legislation.

Question 2. International Information Reporting

Canadian multinational taxpayers must file country-by-country, T106, and T1134 information reports in respect of their international operations, resulting in some taxpayers filing hundreds of information returns. Pillar 2 reporting will add significantly to this compliance burden. When country-by-country reporting was introduced, TEI asked the CRA in its 2016 liaison meetings whether there would be any efforts to streamline T106 and T1134 reporting.¹ The CRA responded that it did not expect to change the information requirements at that time, but that "[g]oing forward, as CRA gains experience with increased electronic data sources and filing requirements, consideration could be given to conducting a review to reduce or eliminate overlap and duplication, where possible."

In 2018, the Department of Finance shortened the timeline for filing Form T1134 from 15 months to 10 months due to concerns from the CRA that they needed information on a more current basis for their audits. At the time, TEI urged Finance and the CRA to review the utility of the three information reporting regimes and consider streamlining reporting requirements for taxpayers. While revised Form T1134 provides some measure of simplification, taxpayers are now required to report significant amounts of additional information beyond what was required by the prior version of the form.

In the past six years, Canadian multinational taxpayers have seen compliance obligations increase significantly. Canadian tax authorities presumably have also spent additional resources reviewing the increased reporting obligations. In our submission regarding Pillar 2 dated July 21, 2022, TEI urged the Department of Finance and the CRA to undertake a comprehensive review of the various information

reporting regimes required for the international operations of Canadian taxpayers and stated that we would be pleased to consult with the Department of Finance and CRA on streamlining measures. Could the CRA please comment on whether it will undertake a review to streamline reporting requirements and reduce the compliance burden on Canadian multinational taxpayers, particularly considering the introduction of Pillar 2? Would the CRA be willing to involve TEI and other taxpayer stakeholders in this review?

CRA response to question B2

Differences in scope and usage between the Country-by-Country Report (CbCR), T106 and T1134 do not lend themselves to streamline these reporting requirements.

Further, the reporting requirements associated with the Country-by-Country Reports are based on international agreements. Similarly, the reporting requirements associated with the Pillar Two GloBE Information Return (GIR) are also expected to be based on relevant international agreements. The CRA will work with other members of the Inclusive Framework, through the OECD, to review any opportunities for streamlining both of these forms.

Question 3. T5 Reporting

Information Reporting for T5s and/or T4A is required for persons making certain payments. Specifically, the preamble in Regulation 201 begins with “Every person who makes a payment to a resident of Canada . . .” TEI requests an exemption in the legislation, or for the CRA to afford administrative relief, providing that neither of these types of slips are required to be prepared for corporate recipients, including payments made within a related corporate group in which the payer and recipients are corporate residents of Canada.

Currently CRA does not assess penalties for failures relating to the completion of box 048 – Fees for services, on the T4A slip. TEI requests that CRA extend this administrative position to refrain from assessing penalties for, as discussed above, payments made to corporations resident in Canada and required to be reported on T5s and/or T4A Slips and Summaries. Alternatively, but less preferred, is to require payment reporting within a related corporate group in Canada on Schedule 14.

Our members who are employed by financial institutions who prepare the returns find this requirement to be an unnecessary administrative burden. TEI members working for corporations who are recipients of the form do not use the information provided for any purpose, as those amounts are already included in the accounts of the company.

Such a change would significantly lower costs for both taxpayers and CRA, without compromising the usefulness of the information required by CRA to assess and audit corporate taxpayers. Payments to individuals, trusts, or partnerships would continue to be subject to T5 reporting under our proposal.

CRA response to question B3

In the context of Canada’s self-assessment tax system, information returns are a key element in maintaining the system’s integrity. Persons are required to report payments made to residents of Canada which includes corporations. Certain key elements of the Canadian tax system rely on the proper classification of the nature of the income earned by a corporation and information returns are a key check for this. For example, investment income earned by private corporations typically attracts a higher tax rate resulting from refundable taxes (the anti-deferral regime). In this situation there is a benefit to CRA Audit of knowing how much income from property the corporation received in assessing the possible application of refundable taxes.

Question 4. CRA Authorizations

a. Setting up CRA Online Access

Early in 2022, TEI and CRA engaged in a dialogue to help CRA understand the challenges of large taxpayers in dealing with authorizations through My Business Account. Many members continue to find it very difficult and administratively burdensome to get CRA online access for entities without involving the CEO, CFO, other senior executives, or independent directors. In the past, a tax executive who was

an officer of all entities could be approved to have level 3 access by having a director sign a client authorization form and submitting it online. The current process requires a director to log into My Business Account to provide a level 3 access for a tax executive. To have the director get access to My Business Account, the director's SIN needs to be associated with the entity at initial set up (incorporation), or the director must call CRA to get that set up. Since many of these directors are involved only at the strategic level for these entities, this process is not practical or feasible for large public corporations. In addition, since different legal entities in the corporate group have different directors, many directors must be trained on how to use My Business Account. Some taxpayers have resorted to appointing individuals temporarily as directors for the sole purpose of granting level 3 access. This is not a sustainable solution. While we acknowledge the need to manage security risk, the new authorization process does not work for large public corporations. Can CRA comment on its efforts to continue to improve the authorization process for large case files?

CRA response to question B4a

The CRA is working on an interim process that will leverage existing relationships between taxpayers and the CRA audit team. This process is being developed currently and will be shared when it is finalized. The CRA continues to explore other long term options that will enable directors to confirm authorization requests in a secure manner.

b. *Non-Resident Corporation Authorizations*

Similarly, members have expressed concerns regarding setting up foreign corporations, which requires a non-Canadian corporate director for access to My Business Account. Prior to obtaining the ReplD needed to use My Business Account, such director must apply for a Non-Resident Representative Number (NRRN). For many large taxpayers, obtaining a NRRN is a lengthy process, taking up to eighteen months in some cases. Going through this process seems unnecessary for a multinational corporation with Canadian subsidiaries and a Canadian tax department. These Canadian entities need a better process to set up the Canadian employee with level 3 "Delegated Authority" status as part of setting up a new business number for the nonCanadian corporation. TEI invites CRA to comment on how this process might be improved, while maintaining an appropriate level of security.

CRA response to question B4b

In situations where the corporations (Canadian or foreign) only have non-resident corporate directors, there is no requirement for a director to confirm the authorization request in My Business Account. In these situations, the CRA will contact the director to confirm the authorization. It should be noted that the residency status for all directors must be updated in our systems and reflect a status of non-resident.

Available options to update the residency status of directors include:

- One of the directors attesting to the non-residency status of all of the directors by phone, fax or mail.
- If one director cannot attest to the residency of all of the other directors, then the directors that cannot be confirmed will have to attest to their own residency
- A director can call the Business Enquiries Line (1-800-959-5525) and ask that the directors be updated with a non-residency status
- A director can also mail or fax a signed request to 1-833-724-7237

c. *Difficulty of communicating with CRA about specific business accounts*

To protect taxpayers, CRA only speaks to authorized persons of a business. In general, only a business owner or a corporate director can be an authorized person. This creates communication difficulty in amalgamation and acquisition scenarios because of the resulting changes in business owners, directors, addresses, etc. In these situations, where directors and officers change quickly, CRA's records are often out of date. Can CRA comment on potential improvements that might allow faster access to old accounts? For example, TEI suggested earlier this year in its discussions with the CRA working group that level 3 authorization for a successor corporation to an amalgamation or wind-up (e.g., the parent company) should automatically be granted in respect of all predecessor corporations.

CRA is now calling individuals with level 3 authorization for a particular entity to verify a change in

directors. If the records have been accurately obtained from the relevant corporate registry, what purpose is served by this verification? It seems odd that changes in directors are verified by the person whose authority to deal with CRA is controlled by those very directors.

CRA response to question B4c

Currently directors and authorized representatives that are on file on the successor account can call or write the CRA to obtain, submit, or change information on the predecessor(s). CRA is working on enhancements to automatically extend online access to predecessor accounts to the successor entity.

The Agency does receive change of director information directly from certain corporate registries, but as a measure to ensure the protection of taxpayer information, a call may be required to confirm the update.

Question 5. Mandatory Disclosure Reporting Forms

a. Information Returns

On February 4, 2022, and August 9, 2022, the Department of Finance released draft legislation regarding mandatory disclosure rules for “reportable” and “notifiable” transactions, as well as for uncertain tax positions. Under the August 9, 2022, proposals, the mandatory disclosure rules will come into effect for transactions entered into in taxation years beginning after 2022. Could the CRA comment on (i) when it intends to release forms through which reportable and notifiable transactions and uncertain tax positions will be reported, and (ii) what level of detail will be required to complete the forms? Will the CRA consult with stakeholders on the design of such forms?

The definition of “advisor” for both “reportable” and “notifiable” transactions includes persons with only incidental involvement in the relevant transaction. These persons are unlikely to have, or have access to, or the ability to obtain, detailed information about the underlying transactions. Will the CRA provide guidance as how such advisors should complete the form?

b. Concerns with Multiple Reporting

The amendments to the definition of “reportable transaction” and the new reporting requirement for a “notifiable transaction” would require reporting by multiple persons under subsections 237.3(2) and 237.4(4). Moreover, reporting is required within 45 days. Does the CRA have comments on the proposed requirement that multiple persons report a single transaction? It is unclear how having multiple parties report a transaction provides the CRA with better information, or how requiring information to be filed within 45 days instead of with a corporate tax return will improve the efficiency of the audit process given that many audits take multiple years to complete. Does the CRA anticipate reviewing these forms prior to or during an audit? What is the expected timeframe in which these submissions will be reviewed?

CRA response to question B5a

NOTE: The responses are based on the draft legislation released on February 4, 2022 and August 9, 2022.

In order to fully assess the feedback received as part of the public consultation on mandatory disclosure rules launched August 9, 2022, the government intends to delay the coming into force date of the reporting requirements for reportable transactions and notifiable transactions until the date on which a bill implementing these changes receives Royal Assent. The coming into force date for uncertain tax treatments would remain the same as described in August (i.e., taxation years beginning after 2022, with penalties only applying after Royal Assent).

The reportable and notifiable transactions will be reported on a revised version of the RC312 Reportable Transaction Information Return. The reportable uncertain tax positions will be reported on a newly developed information return. These information returns have been drafted and are in the process of internal review and translation. We expect to provide the information returns for stakeholder consultation soon.

The information and level of detail requested in the information returns will be much in line with the requirements noted in the Budget 2021 Backgrounder released by Finance on February 4, 2022

(<https://www.canada.ca/en/department-finance/news/2022/02/mandatory-disclosure-rules.html>). As noted above, we expect to provide the information returns for stakeholder consultation soon.

Advisors who are required to report pursuant to draft subsection 237.3(2) and/or draft subsection 237.4(4) should complete the information returns to the best of their ability.

As noted in the Finance explanatory note to draft subsection 237.4(4) 'Requirement to file return': Every person who is subject to a reporting requirement would be expected to make reasonable and good faith efforts to identify the information to be reported and ensure that such information is provided to the Minister of National Revenue in order to satisfy that person's reporting obligation in respect of a notifiable transaction. In addition, the draft legislative amendments provide for an exception for clerical services and secretarial services with respect to the planning.

CRA response to question B5b

We anticipate reviewing the information returns prior to and during audits, depending on the circumstances. At this time, we cannot provide an expected timeframe in which all the information returns will be reviewed, however, we are working on processes to "triage" the submissions to ensure timely review and follow up, where required.

The Budget 2021 Announcement of enhancements to Canada's Mandatory Disclosure Rules (see Tax Measures – Supplementary Information) recognized the recommendations found in the OECD/G20's BEPS Action 12 Report, and that the experience of other countries implementing these recommendations provides a useful model for the development of similar rules in Canada.

The 45-day reporting deadline proposed in the Budget 2021 announcement is intended to address concerns raised in the BEPS Action 12 Report, which recognized that Canada's current June 30 reporting deadline renders it less able than other countries to react quickly to tax avoidance planning.

Question 6. T1135 and Intercompany Debt

Can the CRA provide an update on its position, including consultations with internal stakeholders, regarding the filing obligations of Form T1135 ("Foreign Income Verification Statement") where indirectly owned foreign affiliates owe intercompany debt? Many TEI members rely on the instructions of Form T1135 to conclude that there is no T1135 filing requirement for intercompany debt owed by foreign affiliates. The instructions state a taxpayer does not need to report indebtedness owed by "a foreign affiliate corporation."

The uncertainty relates to the requirement to file Form T1135 in the case where a Canadian corporation ("CanHoldco") has issued a loan to a foreign company ("Forco"), which is indirectly owned by another Canadian company ("CanOpco"). For example, consider that CanHoldco owns 100 percent of CanOpco, which in turn owns 100 percent of Forco. Assume that CanHoldco makes a loan to Forco in an amount exceeding \$100,000.

In reviewing the relevant legislation and the technical interactions between sections 233.3, 233.4, 95(1) and (4), of the Income Tax Act (the "Act"), it appears that Forco's loan would trigger a requirement for CanHoldco to file Form T1135. However, in practice many TEI members have been disclosing these loans on Form T106 ("Information Return of Non-Arm's Length Transactions with Non-Residents"). Therefore, the indebtedness information has been disclosed to the CRA, albeit on a different information form.

CRA response to question B6

The Act imposes an obligation on all Canadian resident taxpayers to file Form T1135 if at any time during the year, the total cost amount of all specified foreign property to the taxpayer was more than \$100,000 (Canadian).

The term "specified foreign property" is defined in subsection 233.3(1) of the Act with certain exceptions including a share of the capital stock or indebtedness of a non-resident corporation or an interest in or indebtedness of a non-resident trust that is a foreign affiliate of the person or partnership for the purpose of section 233.4 of the Act.

Section 233.3 of the Act does not exclude from reporting on Form T1135 investments in all foreign affiliates, but only the investments in non-resident corporations or non-resident trusts that are foreign

affiliates for the purpose of section 233.4. The instructions on Form T1135 do not specifically refer to the definition of “foreign affiliate” as modified by section 233.4 of the Act. We recognise that there may be circumstances where this could lead to some misinterpretation or confusion by a taxpayer and may result in their failure to file Form T1135 or disclose indebtedness owed by a foreign affiliate corporation, as required by the Act.

The foreign reporting forms, including Form T1135, are an integrated and complex group of forms used to collect information on certain foreign holdings and transactions. The CRA continues to consult to ensure the information collected meets the intended purpose of the forms, corresponding legislation and the needs of all stakeholders.

The CRA regularly reviews and updates its forms and publications to clarify ambiguities that may have been identified and to enhance compliance through more effective foreign reporting. The CRA will consider changes to clarify instructions on the T1135 form that may be required to avoid uncertainty. During the consultation period pertaining to the uncertainty described above, taxpayers may refer to the comments made in 2021-0911951C6 regarding penalties.

Question 7. Withholding Income Tax Refunds

TEI invites CRA to comment on its policy for withholding income tax refunds in cases where there may be non-compliance in other accounts, such as fuel tax, excise tax on insurance premiums, and even non-tax related accounts managed by CRA. This is of concern because significant income tax refunds are being withheld due to minor compliance issues in other accounts. In some cases, the refunds are material to the taxpayers, but are held for liabilities in other accounts as low as \$20. We understand these are system-generated holds and that CRA representatives do not have the authority to resolve the holds on a case-by-case basis. Given that processing times for many returns have been longer than normal due to back-ups from the COVID-19 pandemic, these refunds can be significantly delayed. For many taxpayers, such refunds are critical to their operating cash flow, especially in a period when interest rates for loans are rising, which could lead to financial hardship. In addition, taxpayers may not have online access to identify that an amount is owed from an account outside My Business Account. Having such access can help to avoid the non-compliance issue altogether by transferring amounts from a receivable account to a payable account. With that in mind, we have the following questions:

1. Under which accounts can an amount owed trigger a refund hold from another account?
2. What is the CRA’s policy related to releasing refunds where an immaterial noncompliance issue for an otherwise complaint taxpayer is present?
3. Will CRA consider allowing their staff to handle these issues on a case-by-case basis or institute a higher dollar amount threshold before holding refunds to which taxpayers are entitled?
4. Will CRA provide online access to all accounts that may contribute to non-compliance issues so that they can be proactively avoided?

CRA response to question B7

As a result of legislative changes beginning in 2007, the refund hold provisions are coordinated amongst various program accounts administered by CRA. As a result, an outstanding return under almost any program account administered by CRA will result in a refund hold. There are no refund hold provisions related to beer duties and the softwood lumber charge.

Refund holds are based on legislation and not a CRA policy. The refund hold provisions do not provide CRA with discretion in applying the refund hold. No policy related to immaterial non-compliance exists. A filing compliance hold is removed once all outstanding returns have been filed.

Refund holds are applied automatically by the CRA’s systems. Employees are not involved. This ensures the refund hold provisions are applied consistently, evenly, and fairly. The refund hold is placed because of an outstanding return. Refunds may be used to offset an outstanding balance but are not held in that situation. The amount owing on an outstanding return would not be discernable, making it difficult to institute a dollar amount.

From an accounting perspective, our system applies an automated logic that follows a pecking order for allocations/offsets.

Question 8. Canadian Emergency Wage Subsidy (“CEWS”)

Subsections 125.7(1), (14) and (14.1) of the Act require a publicly listed corporation to repay CEWS amounts received for a qualifying period that begins after June 5, 2021, if its aggregate compensation for specified executives during the 2021 calendar year exceeds its aggregate compensation for specified executives during the 2019 calendar year. Does CRA have administrative guidance regarding how this repayment should be made? For example, should taxpayers amend previous applications and remit repayment to the CRA?

As the CEWS online portal is still available for taxpayers, should the repayment be made through the portal? How long does the CRA expect it to be available as most of the COVID-relief programs are complete? If the online portal becomes unavailable in the future, what procedure should taxpayers follow?

CRA response to question B8

A publicly-listed corporation may need to return all or part of the CEWS amount received for a qualifying period where they are subject to the executive compensation repayment rule. Further details on the executive compensation repayment rule are found in the [CEWS technical questions and answers](#). Corporations subject to the executive compensation repayment rule will need to calculate their repayment amount, [change or cancel their related claim\(s\)](#) to remove any wage subsidy they are no longer entitled to, and return any excess wage subsidy payments they received.

Administrative guidance regarding how this repayment should be made is found in the web pages for COVID-19 wage and hiring support for businesses, [Return a Payment](#). If the corporation uses My Business Account (MyBA) and has a wage subsidy balance owing, a repayment can be made through MyBA. Otherwise, the wage subsidy may be repaid online using My Payment, through a financial institution, or by mail, depending on the situation. For those unable to pay back the wage subsidy online through MyBA, My Payment, or online banking, all or part of a wage subsidy payment can be returned by direct deposit or cheque, depending on the situation.

CRA response to question B8

The Canada.ca pages were updated on November 4th to reflect that all of the subsidy claim period deadlines will have passed and people can no longer apply for any business subsidy (CEWS, CERS, CHRP, THRP, or HHBRP) as of that date. However, there is no deadline to cancel or reduce the amount of a past claim. The online web applications will remain available for the foreseeable future to allow businesses to [cancel or cancel a past claim](#). If this changes, further instructions will be communicated to the public.

Information regarding the executive compensation repayment rule can be found under [repayments for publicly traded corporations](#), which includes information on the following topics:

- What the executive compensation repayment rule is and who it applies to
- What executive remuneration is
- Calculating the amount you need to repay
- Determining an executive compensation repayment amount as part of a group
- Executive compensation repayment amount calculation for periods 17 to 23
- Executive compensation repayment amount calculation for periods 24 to 28
- Repayment due to taxable dividends for periods 24 to 28
- How to repay excess wage subsidy amounts you received
- Examples

Question 9. Data Breaches

Several employees of TEI member employers have received letters directly from the CRA with respect to a potential data breach from their employer’s CRA online account. Please see Appendix A, where the body of one such letter has been recreated.

Given that increased use of online resources by taxpayers has been encouraged by the CRA, it is troubling that an allegation about an employer data breach was sent to individual employees without

also notifying the employer of the alleged breach.

The letters do not mention which online accounts were breached. The only information available on this data breach is contained in the following website page, under the heading ***If your account has been compromised***: <https://www.canada.ca/en/revenue-agency/corporate/security/account-security.html>

We respectfully request CRA contact employers prior to issuing similar letters with the particulars of the nature of the breach alleged.

CRA response to question B9

- Once unauthorized activity has been identified on a business account, the CRA issues a letter to the business informing them of the breach, and advising them that their employee's personal information was improperly accessed by an unauthorized third party. Specific details of the employee breach are not disclosed to the business due to the CRA's requirement to protect taxpayer confidentiality.
- As per CRA procedures, letters to affected employees are sent out 48-72 hours after receiving confirmation that the business letter was sent. In certain unique and infrequent circumstances, an employee may be notified prior to the business receiving their letter. For example, if the business letter is returned by Canada Post as undeliverable.
- In accordance with the confidentiality provisions of Section 241 of the Income tax Act, letters to affected employees do not disclose the details of the affected business, nor do they specify if the business is the employees' current employer, or a previous employer.

C. Audit/Appeal Matters

Question 1. Timeliness of Audits

The CRA has expressed a goal in prior liaison meetings to make audits more current. This was the reason given for shortening the deadline for filing Forms T1134. Could the CRA please comment on whether large corporate audits have become more current and provide any statistics in that regard?

CRA response to question C1

Currently ILBD is actively evaluating ways to decrease the time between the initial assessment of an income tax return and the conclusion of an audit. We support the view that decreased timelines will increase efficiency in the audit and assist large corporations in meeting their tax obligations while obtaining earlier tax certainty whenever possible. We are in the midst of discussing a new protocol that will see the CRA obtaining specific records from large corporations and incorporating them into the audit process and risk management assessments on a contemporaneous basis. We believe this will promote the effective and efficient utilization of resources on both sides as the corporate memory will be fresh and easy to access.

Over the past couple of years ILBD has been working toward the implementation of certain aspects of the Approach to Large Business Compliance (ALBC) refresh as well as improvements in the referral process and timelines. The ILBD recognizes the importance of consistency in the referral process including early engagement with subject matter experts. We believe involving all experts as early as possible will work toward reducing audit & file resolution timelines. We further believe that efficiencies can be partially achieved by updating information request timelines and expanding the use of technology. Technology continues to play an increasingly important role in risk identification, allowing the CRA to focus on the highest risk taxpayers and issues in a more efficient manner.

ILBD will consider re-introducing real-time audit as part its ALBC refresh but only in a very limited number of situations, taking into consideration the challenges that may occur with respect to timelines, capacity and measuring results. A real-time audit occurs when CRA conducts an audit of specific issues before the taxpayer files the corporate tax return but after the specific transactions are undertaken. Initially, this would generally be done at the request of the taxpayer. 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 (UTPs) contained in the taxpayer's tax accrual working papers

(TAWP). The unique nature of this type of audit would be beneficial only in certain situations where a taxpayer wants earlier tax certainty and it is fully transparent about its UTPs.

In general, we intend to evaluate and apply some of the lessons we have learned over the past two years as a result of the priority audits of the Canada Emergency Wage Subsidy (CEWS). Some best practices may be applied where beneficial, to streamline our regular audit workload. The approach to the CEWS audits was innovative for the CRA given post-payment audits were carried out prior to the filing of an income tax return, and included some real-time prepayment reviews. Some of these lessons learned include:

- ensuring effective validation and refining existing risk assessment criteria;
- identifying trends and hallmarks associated with high-risk or potentially non-compliant taxpayers or claims and making proactive changes to algorithms and developing new ones;
- closely considering stakeholder input and quickly implementing improvements wherever possible such as streamlining the request for documentation; and
- providing ongoing development and delivery of training, and audit and technical support geared at current legislation as well as feedback from auditors and audit results.

Question 2. GAAR Committee Minutes

The recent case of *Coopers Park Real Estate Development Corporation v. The Queen* held that a taxpayer was entitled to discovery of documents reviewed by the General Anti-Abuse Rule (“GAAR”) Committee in a case similar to the taxpayer’s when the CRA relied on the GAAR Committee’s analysis of that case in reassessing the taxpayer. Taxpayers who have been reassessed under the GAAR and who are not yet in litigation typically need to rely on Access to Information Requests to obtain GAAR Committee documents. The Access to Information process, however, can take years and the material received can be heavily redacted. Will the CRA commit to providing taxpayers with access to GAAR Committee material relied on by CRA (with appropriate redactions for other taxpayer information) relating to their case or similar cases in the interests of transparency and quicker resolution of disputes with taxpayers?

CRA response to question C2

As with any audit, we encourage transparency and communication in the conduct of a GAAR audit. The CRA’s position on the application of the GAAR will be communicated to a taxpayer prior to reassessment in a proposal letter, with the opportunity for representations to be made. The proposal letter and final letter will include the GAAR analysis and a response to any representations received.

Specifically, with respect to the GAAR analysis, it will include the facts relied on, what is the tax benefit, the avoidance transaction(s), what in CRA’s views lead to the abusive result of the transaction (misuse and abuse), and finally the reasonable tax consequences to support the application of the GAAR consistent with the guidelines provided by the Supreme court of Canada. For more information, you may refer to the 2016 CTF CRA Round Table with respect to the GAAR procedures to be followed before a taxpayer can be reassessed under GAAR.

In terms of providing access to CRA material, a reassessment under the GAAR is subject to the same legislative and administrative rules as any other reassessment. Auditors must follow the rules dictated by the relevant legislations, notably section 241 of the ITA, the *Access to Information Act* (“ATIA”), and the guidelines outlined in CRA’s *Informal Disclosure Guideline*².

Regarding GAAR Committee materials, it generally contains advice or recommendations developed by a Government Department and accounts of consultations or deliberations involving officials of a Government Department, and as such is subjected to the rules contained in subsection 21(1) of the ATIA. Also, it is the CRA policy not to disclose material that contains internal debates and discussions regarding the strengths and weaknesses of an assessing position³.

GAAR Committee materials may also contain third-party information. In that regard, the CRA is precluded, under section 241 of the ITA, to disclose any third-party information defined in general terms as being any type of information, in any form, that may identify a taxpayer⁴.

² <https://www.canada.ca/en/revenue-agency/services/tax/technical-information/compliance-manuals-policies/informal-disclosure-guidelines.html#toc10>

³ Please refer to the *Informal Disclosure Guidelines*. Supra note 1.

⁴ And that the CRA obtained to administer the ITA or has prepared from such information.

The same legislative rules and administrative policies would apply with respect to similar cases.

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

Question 1. Communication with CRA

In **Question 2** of the 2021 TEI liaison meetings, we asked about communication with CRA. Member feedback indicates using the CRA portal can be frustrating because it takes a very long time (i.e., hours) to upload large files even though they are within the file size limits. In addition, the system will often produce an error message after some time has passed, requiring the upload process to be restarted. Can CRA please comment on whether it will improve this upload process so files can be uploaded more quickly and provide comments on whether the CRA is considering the use of a secure data channel?

CRA response to question D1

1. [Uploads in the portals \(ABSB\)](#) – In June 2020, uploads to the portals were increased to 1GB for audit files from 150MB (the limit is 500MB for other Submit Documents). The CRA looked into further increasing the file size for uploads, however it was determined the network infrastructure would not be able to sustain further increase. The CRA is in the process of onboarding a Secure Drop Zone solution that will be extended to our audit programs to allow exchange of files that exceed 1GB.

With regards to errors in uploading files in the portals, it is important that users are using the latest browsers and high speed internet connections.

2. [Whether CRA is considering the use of a secure data channel](#) – In accordance with the Minister’s mandate letter of working to modernize the Canada Revenue Agency (CRA) by offering a better digital capacity and services for Canadians, the Collection and Verification Branch (CVB) is launching a new secure digital service called - Secure Drop Zone (SDZ). The SDZ is a secure, two-way channel allowing the CRA, taxpayers and third parties to digitally exchange information on an ad-hoc basis.

CRA users will be able to create a temporary secure 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. Digital files can be received in multiple formats (pdf, Excel etc.) making it easier to integrate the information into CRA systems.

A secure data channel ensures an audit trail is maintained and guarantees delivery in real time. In addition, when files are transmitted digitally through the secure channel, the risk of loss and security breaches related to other more traditional methods of sharing this information, including printing and mailing, is reduced.

Question 2. Regulation 102

In Question 5 of the 2021 TEI liaison meetings, we asked for guidance on the meaning of “reporting for work at an establishment of the employer.” CRA replied that the meaning was currently under review. Could the CRA please provide an update on this review?

CRA response to question D2

The Income Tax Regulations (Regulations) provide that the amounts to be withheld by an employer from the remuneration paid to an employee are determined based on the province or territory in which the establishment to which the employee reports for work is located. Where an employee is not required to report for work at any establishment of the employer, the withholding is based on the province or territory of the establishment from which remuneration is paid.

Current CRA’s interpretation of ‘reporting for work at an establishment of the employer’ turns on the frequency and recurrency of the physical presence of an employee at an establishment. Given the new work environment where teleworking is more prominent, we acknowledge that this interpretation can create confusion for employers.

Since the 2021 TEI Liaison Meeting, the CRA has examined whether its current interpretation should be revisited to better take into account the new teleworking reality and explored the possibility of broadening its current interpretation within the limit of existing Regulations.

The CRA anticipates its review on the matter to be completed before Summer 2023.

Question 3. Benefits and Allowances Received from Employment

In Question 15 of the 2021 TEI liaison meetings, we asked for an update on Income Tax Folio S2-F3-C2, Benefits and Allowances Received from Employment, which had been under review since October 2017. In mid-2022, the CRA shared with TEI for comment proposed changes to the CRA's webpage updating your policy on taxable benefits relating to parking, gifts, awards and long service awards, as well as social events and hospitality functions. As a result, TEI met with CRA representatives and provided input and suggested further discussion on some topics. We have not heard anything further and understand that the Folio is still under review. Could CRA please provide an update on the status of their review?

CRA response to question D3

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.

In addition, in early October 2022, CRA published the following updated and new CRA administrative policies:

- [Parking - Canada.ca](#)
- [Gifts, awards, and long-service awards - Canada.ca](#)
- [Social events and hospitality functions - Canada.ca](#)

The CRA considered key external stakeholders' input and feedback prior to finalizing the content.

Question 4. Residency Certificates

In Question 22 of the 2021 TEI liaison meetings in 2021, we asked CRA how to improve the Residency Certificate process. To provide more background, TEI asked the following question in 2018:

In 2015, TEI asked some specific questions relating to the provision of residency certificates by CRA, with specific reference to ways to reduce the long processing times. While wait times appear to have improved for some, many taxpayers still find that they cannot obtain residency certificates in a reasonable amount of time. With CRA's increasing use of technology, what measures of automation can be introduced to this process to reduce manual efforts and therefore wait times? What other efforts is CRA undertaking to better streamline the residency certificate program? In addition, the CRA indicated in its 2015 response that it "will continue to advocate for a reduced need for certificates of residency in order to obtain treaty benefits". Can the CRA please provide an update on this initiative?

CRA's response to the 2018 TEI question was as follows:

The certificates of residency workload is performed at CRA's Regional Correspondence Centres located in six Tax Services Offices across Canada. Requests are sent to the correspondence centres based on geographical location of the requestor. They are then inputted into a central case management system and depending on capacity, age of request, and available resources they are assigned to one of the six correspondence centres for action.

Correspondence agents conduct analysis using the CRA's national systems and all letters issued are contained in a central repository system available for viewing by all Regional Correspondence Centres. That being said, due to the fact that there is the potential for the requestor's situation to change over the course of the year, a complete review has to be conducted for each request to determine the residency status at that point in time.

The standard processing timeframe for certificates of residency are between 8-10 weeks from receipt and in the majority of cases, this timeframe is being met. There are periods, such as the beginning of the year, where these timeframes will be longer based on an increase in the number of requests.

Status update requests for individual or trust certifications of residency can be made by calling our Individual Tax Enquiries line at 1-800-959-8281. Corporate status updates can be made by calling our Business Enquiries line at 1-800-959-5525. Call centre agents have access to the correspondence case management system which allows them to determine the status of the request. The agents are provided with specific procedures regarding how to address these status enquiries.

It is TEI's understanding that the 8-10 week processing timeframe indicated in the 2018 CRA response is not being met for numerous TEI members. In TEI members' experiences, the turnaround can take or exceed six months. In some cases, the Residency Certificate is not received at all, requiring TEI members to make a second request, extending the process even further. With respect, the current process is neither effective nor efficient. TEI members recommend a process to request the Residency Certificate from their Large Case File Manager, as was possible previously. Because the Large Case File Manager is aware of the taxpayer's situation, we think this would be the most effective and efficient process. If this is not possible, can the CRA take other steps to commit to, or preferably improve, the 8-10 week targeted CRA processing timeframe? We are also interested in any estimated timetable for forthcoming improvements.

CRA response to question D4

Since the last TEI meeting, the CRA has made a number of changes to the processing of Certificates of Residency that will result in better timeliness and efficiency.

First, a new administrative processing model has recently been implemented to move the processing of these certificates from a small group of employees in a Tax Service Office to a larger group of trained employees in our Contact Centres. This will allow the CRA to better address cyclical inventory surges that challenge our processing timelines and usually cause us to exceed our processing target.

Second, the CRA has recently centralized the national intake of requests for certificates of residency to our Sudbury office. This will allow for improved inventory tracking, management, and distribution of enquiries across our workforce for processing. The external CRA website has been updated with the new intake address and fax information.

Third, the CRA has recently developed an electronic submission function for requests in our online secure portals: My Account, My Business Account and Represent a Client portals. This means clients and authorized representatives can electronically submit their request for a certificate of residency for secure processing. A confirmation number is provided with each submission. We highly recommend that firms use the electronic "submit documents" function in the portals for future submissions.

Finally, we've heard from some representatives that they were having challenges with the Limited Power of Attorney being accepted for identity authentication and authorization purposes when they called the CRA. As a result, we have worked closely with the contact centre program to revise their procedures and now the Limited Power of Attorney is recognized as valid authorization to obtain information related to a certificate of residency request.

As you may know, the processing of certificates of residency can be complicated and time consuming, involving multiple jurisdictions and tax treaties. We recognize and regret that there was an inventory backlog in 2022 and early 2023, and that we were processing certificates in excess of our 8 to 10 weeks processing target. We have addressed the situation by temporarily reassigning more employees to processing which has reduced the backlogged inventory. Processing timeframes are currently within the 8 to 10 week target.

It is important to highlight that the processing target of 8 to 10 weeks was established for a single request for a certificate of residency and it was not intended for the large, consolidated bundles of requests we tend to receive.

CRA has the following recommendations for firms who submit residency certificates that would facilitate processing:

- To the extent possible, please do not consolidate large, multiple requests and bundle them into a single submission. This creates an unplanned intake surge and can result in an immediate processing backlog. As mentioned above, the processing target was established for a single request submission and we cannot process large, consolidated submissions within the same processing target.
- Please do not wait until the beginning of the calendar year to request the certificate. CRA will accept your request starting on October 15 for the upcoming year.
- Please clearly indicate and separate any multiple requests by account type (SIN, Trust Account, and Business Number). This will make the requests easier to inventory and process by our employees.
- Please ensure that all requests clearly include the tax year and the country. This will reduce the number of denied requests and save everyone time and effort.
- If it's necessary to submit a large number of requests in a single submission, it would be appreciated if a cover sheet is included listing all individual requests.

Question 5. Administration of Stock Option Rules

At the 2021 TEI liaison meetings, we asked whether employees could be notified electronically under paragraph 110(1.9)(a) that a security is a non-qualified security. The CRA stated that electronic notification was currently under review. Could the CRA please provide an update on this review?

CRA response to question D5

When a security is deemed to be a non-qualifying security under subsections 110(1.31) or (1.4) of the Act, subsection 110(1.9) of the Act requires the employer to (a) notify the employee in writing that the security is a non-qualifying security within 30 days after entering into the agreement; and (b) notify the CRA in prescribed form that the security is a non-qualifying security by the filing due date for the taxation year of the qualifying person that includes the time the agreement is entered into.

The Act does not specify the form or manner in which the notice described in the first requirement must be provided to the employee and no form has been prescribed for this purpose. CRA will therefore accept that the notice requirement imposed under paragraph 110(1.9)(a) of the Act has been met if the employee notification is provided either electronically or on paper.

Question 6. Non-Resident Withholding Accounts

In the 2020 TEI liaison meeting, the CRA indicated that while non-resident tax accounts were not currently accessible through existing CRA portals, the CRA was assessing the feasibility of implementing digital offerings for non-resident tax accounts. Could the CRA please provide an update on this assessment?

More generally, will the CRA offer mechanisms allowing electronic submission of service requests and document submissions for non-resident accounts? Electronic services eliminate the need to mail requests with all the attendant uncertainty and would result in more efficient service delivery for everyone.

CRA response to question D6

The CRA recognizes the value in providing digital service options for our clients. To that effect, we are working to have non-resident tax accounts available in CRA's secure portals in 2024. This will provide account holders and their representatives the ability to manage NR accounts online. The suite of services available in the portals will gradually expand throughout 2024 and 2025 and will include options such as viewing correspondence, updating account information, and submitting documents or requests to the CRA.

In addition to this, clients who can already use My Account, will soon have the ability to submit certain forms online using our Submit Docs service.

This option will be available in May of next year for forms NR5, NR6, and NR7-R.

Building on these service improvements to come, we will continue to actively explore options to expand digital options in the future.

Question 7. Advance Pricing Agreements (“APA”)

TEI members appreciate the APA program as a proactive service offered by the CRA to assist taxpayers in preventing transfer pricing disputes that could otherwise arise in future tax years.

The following table from the CRA’s latest yearly APA report, released in April 2021, appears to point to a sharp decline in pre-file meetings since 2018 after trending higher from 2016 through 2018. While 2020 and 2021 were unusual years due to COVID-19, the reduction in pre-file meetings appears to have started before the pandemic. Can the CRA comment on its current observations regarding pre-file meeting levels, have these returned to pre-2019 levels? TEI would welcome dialogue with the CRA on TEI members’ respective observations regarding a taxpayer’s decision to consider an APA application in Canada.

TABLE 1

Program inventory										
Period	Pre-file meetings	Applications withdrawals	Applications pending	Opening APA balance	APAs accepted	APAs completed	APAs unresolved	APA withdrawals	Closing APA balance	Change in inventory from previous period
2020	20	0	28	65 ¹	19	15	0	0	69	3
2019	15	0	27 ²	71	7	12	0	0	66	-5
2018	31	3	19	67	32	25	0	3	71	4
2017	24	2	23	90	16	36	0	3	67	-23
2016	23	2	17	107	12	26	0	3	90	-17

CRA response to question D7

The APA program is administered by the CRA’s Competent Authority Services Division (CASD) in the International and Large Business Directorate, Compliance Programs Branch.

Canada has a longstanding and successful APA program since its inception in 1990. CRA encourages the use of APAs as a dispute prevention mechanism for transfer pricing issues. In February 2021, the CRA issued a notice to tax professionals announcing the cancellation of cost recovery charges for APAs, further improving access to the APA program in Canada. Since 2019, Canada has actively participated in the preparation of an OECD Manual on Bilateral APAs (BAPAM) that was recently approved by all members of the OECD/G20 Inclusive Framework on BEPS and released to the public by the FTA on September 28, 2022. The focus of the BAPAM is to identify opportunities to improve the APA process. It outlines several Best Practices for jurisdictions to streamline the process and achieve greater efficiencies for the benefit of both taxpayers and tax administrations. Concurrently with this work, CRA is updating the administrative guidance in Information Circular 94-4 for APAs in Canada in order to implement the improvements identified as part of the BAPAM. An updated version of the Circular will be released shortly.

A feature of Canada’s APA program is for a preliminary meeting (often referred to as an “early engagement” or “pre-file” meeting) to take place between the CASD and the taxpayer interested in obtaining an APA to discuss the suitability of the program for the proposed covered transactions. Although a taxpayer’s acceptance into the APA program is not determined at the pre-file stage, the number of pre-file meetings held in a given period can often provide a preliminary indication of the level of interest in the APA program.

It is CRA's experience that the number of APA pre-file meetings follows a fluctuating pattern, with a typical spike in one year, followed by lower numbers in the following few years. This may be caused by the renewal of a number of APAs within the same period. The CRA systems do not currently track whether an APA is a renewal or a new APA request. As such, there may be an inherent cyclical nature to

the number of APA pre-file meetings over a number of years. Nonetheless, averages remain relatively stable over time.