Tax Executives Institute Meeting with CRA
December 4, 2012

Master Q&A

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Question 1 - Follow-up Questions and Carryover Items from Prior Years

a) Partnership Returns and My Business Account

In response to question 1(c) of the December 2011 liaison meeting agenda with TEI, the Canada Revenue Agency (CRA) said that it was working toward an online solution that would permit taxpayers to track the filing status of partnership information returns, perhaps as part of the *My Business Account* web portal. CRA's goal was to have the system in place for 2012 fiscal periods. Can CRA provide an update on the status of the online notification process? We also invite a discussion whether other partnership return details will be available online. Finally, are enhancements to the *My Business Account* web portal or other online resources contemplated, including the capability of e-filing Form T5013 (*Statement of Partnership Income*)?

Response by CRA:

The CRA is pleased to confirm that, as of October 2012, partnerships and representatives can use the MyBA portal to view the status of T5013 information returns.

CRA is working towards the ability to electronically file T5013 returns using the MyBA portal with a target date of January 2014. CRA will also be looking at options to provide details on previously filed T5013 returns through the MyBA portal, but no tentative dates have been established. The CRA welcomes suggestions for online services that help reduce compliance burden.

b) Foreign Reporting Forms

In response to question 1(a) during the December 2011 liaison meeting agenda with TEI, CRA said that revisions to Forms 1134A (*Information Return Relating to Foreign Affiliates That Are Not Controlled Foreign Affiliates*) and 1134B (*Information Return Relating to Controlled Foreign Affiliates*) were nearly complete and revised forms would be released soon. Also, in response to question 2 of the same meeting agenda, CRA said that the International Tax Data Working Group was exploring e-filing for foreign reporting forms, including Form T106 (*Information Return of Non-Arm's Length Transactions with Non-Residents*), T1134A, and T1134B. We invite CRA to provide an update on these initiatives.

Response by CRA:

Revised forms:

Forms 1134A, *Information Return Relating to Foreign Affiliates That Are Not Controlled Foreign Affiliates,* and 1134B, *Information Return Relating to Controlled Foreign Affiliates*, have been combined. The new form is now in a Summary/Supplement format called,

T1134A&B (Combined) *Information Return Relating to Controlled and Not-Controlled Foreign Affiliates.* Each reporting entity must file a Summary sheet and attach a separate Supplement for each foreign affiliate and/or controlled foreign affiliate.

In a few months, the new form will be available on-line in PDF fillable/savable format. The new form can be used for taxation years starting after 2010. Delays were encountered in publication because all CRA forms must now meet the Government's accessibility requirements which allow them to be read by assistive technologies in both English and French.

The Summary sheet includes the following:

- The functional currency is required on the top of the Summary sheet (as it is on the T106);
- Part I, Section 1 pertains to Information regarding the reporting entity. Additions to this section consist of an area to provide a business number used for other reporting purposes, the country code of the reporting entity, and an area to record the number of Supplements attached;
- Part 1, Section 2 includes the Certification area which has been slightly modified; and
- Part I, Section 3 pertains to the organizational structure of the group.

The organizational structure remains a requirement only if the reporting entity is reporting on one or more controlled foreign affiliates, but the format in which it is to be reported has been modified. We have removed the option to submit a separate group organizational chart.

The above information is only provided once on the Summary, therefore duplication is greatly reduced.

The entire Supplement must be completed for controlled foreign affiliates. Information on non-controlled foreign affiliates is only required in Part II, Sections 1 to 4A, and Part IV of the Supplement.

The Supplement sheet includes the following:

- Part II, Section 1 is a summary of the reporting entity. This area will be automatically populated if the new fillable/savable PDF is completed on-line;
- Part II, Section 2 pertains to information regarding the foreign affiliate. The first time filing question has been moved to this area, and a question asking if the foreign affiliate is a controlled foreign affiliate has been added;
- Part II, Section 4A has been revised. It now includes a space to record the actual amount of the dividend from each specific surplus pool;
- Part III, Section 1 has the tick box option of "From 6 to 15" removed; and
- Part III, Section 2 now provides for actual amounts and currency codes instead of specified ranges.

Fields for amounts reported in foreign currencies have been removed. The form now provides one field for the amount, and where the amount can be stated in a currency other than the Canadian dollar or the elected functional currency, a field is provided for the currency code.

During the December 2011 meeting, it was mentioned that Part III, Section 3(x) of the T1134B was deleted per a change in legislation. The anticipated changes in legislation were not made; therefore, we have retained the line, *FAPI under the description of C in the definition of FAPI in subsection 95(1) of the Act*, in Part III, Section 3 (vii).

The initiative of developing the ability to electronically file the foreign reporting forms is still on the International Tax Data Working Group's agenda. The foreign reporting forms included in this initiative are: T106, T1134A&B (Combined), T1135, T1141 and T1142. However, due to the CRA's limited resources in the current economic environment, it is questionable as to where this initiative will fall within CRA's priorities. In addition, meeting the Government's accessibility requirements remains the Electronic and Print Media Directorate's primary concern. Nevertheless, the new PDF fillable/savable version of the T1134A&B (Combined) and the T106 have been developed with e-filing in mind by adding enhanced validations which will support future e-filing requirements. The International and Large Business Directorate will continue to pursue this project, but no timelines can be reported at this time.

c) Replacement of Income Tax Technical Publications with Income Tax Folios

CRA recently announced the launch of Income Tax Folio publications (hereinafter "Folios") to update and supersede information currently found in the Income Tax Interpretation Bulletins and to improve web functionality. At the same time, CRA announced that "all of the archived Income Tax Interpretation Bulletins, nine of the current Income Tax Interpretation Bulletins and all archived ITTNs were cancelled, effective September 30, 2012." Finally, to expedite the development and publication of the Folios, the Income Tax Rulings Directorate has undertaken an External Contributor Framework with external organizations.

We invite a discussion of the effect of the initiative and its timeline to completion based on the following questions:

i. Will CRA be able to add resources or devote additional resources from other sources in order to ensure that taxpayers have access to income tax technical publications and that the Folios remain current? How is CRA prioritizing the development and issuance of the Folios? Will topics identified through the External Contributor Framework (*i.e.,* by way of a submitted Topic Selection Form) receive priority consideration for updates?

ii. The webpage summarizing the Folio project states that the updates will require several years to complete. Can CRA provide a timeline for completion as well as interim milestone dates (*e.g.*, which Folio subjects it anticipates completing by particular dates)?

iii. Can CRA provide additional explanation about the process, including why nine current ITs were cancelled before they were replaced by a Folio? Will the cancelled ITs subsequently be incorporated in a Folio? Can taxpayers rely on the positions included in the cancelled ITs until a Folio is issued with revised or restated guidance?

iv. Can CRA clarify what an "archived" Advance Income Tax Ruling is and what (or how) taxpayers may be affected by their cancellation? The Folio announcement does not refer to the "archived Advance Income Tax Rulings," but all were cancelled effective September 30, 2012, along with "all archived Income Tax Bulletins," nine current Interpretation Bulletins, "all archived Income Tax Technical News," and "all archived Income Tax Directives."

Response by CRA:

Answer 1(c)(i)

For the foreseeable future, no additional resources will be available to the Income Tax Rulings Directorate for the Income Tax Folio Initiative. In light of this the Directorate has contacted several Liaison Organizations, including the TEI, with a view to soliciting the participation of tax professionals in the drafting of Folio Chapters. This collaboration will facilitate the more timely population of the Folio inventory.

In terms of prioritizing the Folio production, in 2011 we conducted internal and external consultation regarding the IT Bulletins. Additionally, we gathered data pertaining to Bulletin web hits on the CRA website as well as Bulletin usage data from the commercial tax publishers. Based on the information received, an initial priority list of approximately 54 Interpretation Bulletins was developed. Efforts are being made to begin the update process with Folio Chapters that will address the topics identified on the priority list. Liaison Organizations will be provided with the priority list as a starting point for individuals who may be interested in participating. This is not to say that offers to work on other updates would be refused.

Answer 1(c)(ii)

We hope to launch the Income Tax Folios with an initial publication of 10 – 12 Folio Chapters and have targeted early 2013 for these releases. This time frame is still subject to operational realities and may be subject to change. Beyond that, we have no specific timelines. Individual Folio Chapters will be published on an as-completed basis.

Answer 1(c)(iii)

In 2011, the IT Bulletins were reviewed by the subject matter experts within the Income Tax Rulings Directorate with a view to categorizing each based on the degree to which the information was outdated. One of the categories available was to designate the Bulletin as unnecessary or obsolete. The nine Bulletins cancelled were those that were placed in this category.

Formerly, an obsolete Bulletin would have been archived. Archived Bulletins were retained on the CRA website for historical purposes, but were prefaced by a warning that they should not be relied upon. However, we are now required to comply with updated standards applicable to all government Web sites. These standards limit the type of information that may be retained on the Web site. Because retaining information for historic purposes does not fit within the scheme of this policy for Web management, all archived Bulletins and ITTNs, as well as the nine Bulletins that were determined to be obsolete were cancelled and removed from the Web site.

As has always been the case with all archived or cancelled publications, the information contained therein may still have elements that remain applicable, but should not be relied upon.

Answer 1(c)(iv)

The CRA announcement in question confirmed that in keeping with a CRA policy to remove redundant, outdated and trivial information from its Web site, various publications would be cancelled and removed. Specifically referred to and hyperlinked were the following publications:

- All archived IT Bulletins
- Nine current IT Bulletins (as discussed above)
- All archived ITTNs
- All archived IT Directives and
- All archived ATRs

We understand that this question was posed because it was not realized that this announcement pertained only to materials published on the CRA Government of Canada Web site. We also understand that there was perhaps some confusion about the reference to the ATR line of publications. The ATRs were a product line whereby we published generic, representative rulings that applied to various common tax situations. Similar to the IT Bulletins, they were numbered chronologically, from ATR 01 – ATR 70.

In 1996, when all technical interpretations and advance income tax rulings were made available to the commercial publishers, the ATRs were archived. The materials available through the commercial publishers superseded the ATRs for usefulness and currency.

Notwithstanding the cancellation of the archived ATRs, severed income tax rulings will continue to be available from the commercial publishers, just as they have been since 1996. Furthermore, the commercial publishers were given early notice of the pending cancellations, in order to provide the opportunity to preserve the content of the publications in question in their subscription materials.

Question 2 - Vision 2020

During TEI's May 2012 Annual Canadian Tax Conference, Assistant Commissioner for Legislative Policy and Regulatory Affairs Brian McCauley and Assistant Commissioner for Strategy and Integration Catherine Bennett outlined CRA's *Vision 2020 Strategic Plan*. Can CRA provide an update on its initiative?

Response by CRA:

Update on Vision 2020:

Vision 2020 sets out the directions that the CRA needs to pursue to continue as a modern, successful tax administration in a global business and tax environment of growing complexity. Vision 2020 was officially launched within the Agency on May 25, 2012.

The launch of Vision 2020 signalled the beginning of broader communication and dissemination of the Vision. Internally, in support of the launch, the CRA established a dedicated internal web site to deliver general background information to employees. Externally, Vision 2020 was officially launched by including it in the introduction of the Summary of the Corporate Business Plan (CBP) 2012-2013 to 2014-2015. The next iteration of the CBP will again lay out the longer-term direction for the CRA including key areas where we will focus our attention in order to progress towards the vision.

Senior management continues to engage their employees, through a variety of media (e.g., presentations, town halls, branch strategic planning sessions), on what Vision 2020 means and how it may impact their work. The objective is to ensure a good understanding of Vision 2020 and how the work of employees across the Agency can contribute to the realization of the Vision. As a result, ongoing work and priorities across the Agency are aligning with and in support of the Vision. The strategic directions serve as a tool for managers to use when making decisions on the direction of projects and initiatives.

Since the spring, Agency Management Committee (AMC) has continued to focus on Vision 2020 and have held strategic planning meetings to discuss how to realize the various strategic directions identified as part of the Vision. These meetings have explored ways in which the Agency could manage compliance intelligently, integrate the taxpayer experience and make better use of data across the Agency.

We are currently in the process of laying out a roadmap for Vision 2020; that is, identifying a small number of key initiatives that will advance core strategic directions. We are also developing outcome indicators to measure the success of Vision 2020. The CRA has a solid track record of successfully delivering major initiatives and we expect that our Annual Report for 2012-2013 will demonstrate that the CRA is making significant progress toward Vision 2020.

Question 3 - Scientific Research & Experimental Development (SR&ED)

Under subsection 127(9), a "contract payment" for research and development will qualify as an eligible expenditure for investment tax credit (ITC) where the payment is made to a "taxable supplier." It is not always possible, however, for a Canadian taxpayer to determine whether a non-resident is a taxable supplier. We invite CRA's views on how a Canadian taxpayer can determine the "taxable supplier" status of a non-resident. For example, if a Canadian taxpayer obtains an affirmative representation of taxable supplier status from non-residents, will that be sufficient documentation?

Response by CRA:

The term taxable supplier is defined in subsection 127(9) of the Act and means a person resident in Canada, a Canadian partnership, or a non-resident person or non-Canadian partnership that pays or receives an amount in the course of carrying on a business through a permanent establishment in Canada. Generally speaking, a non-resident person or non-Canadian partnership that carries on business through a fixed place of business in Canada will have a permanent establishment in Canada.

This term "taxable supplier" is used in determining whether an amount received by a claimant represents a "contract payment," and whether an amount paid by a claimant is a "qualified expenditure" for investment tax credit (ITC) purposes—both of these terms are defined in subsection 127(9) of the Act. A "contract payment" received by a claimant from a taxable supplier and an amount paid by a claimant to a person in respect of SR&ED that is not a taxable supplier will reduce the claimant's qualified expenditures for ITC purposes.

Based on the context of your question you are concerned about the application of the taxable supplier rules where a claimant is making a payment to another person for SR&ED.

A claimant has the responsibility to perform proper and adequate due diligence before determining whether a non-resident person or a non-Canadian partnership is a taxable supplier. Therefore, a claimant must maintain evidence supporting the position that an amount was paid or payable to a non-resident person or non-Canadian partnership with a permanent establishment in Canada.

A claimant will want to ask the non-resident person or non-Canadian partnership if they carry on business through a fixed place of business in Canada. Also, a claimant will want to know who will have responsibility for signing a contract, who will ultimately perform the work under the contract and where that work will ultimately be performed. Only the expenditures for SR&ED work performed in Canada can result in SR&ED tax incentives. In addition, a claimant will want to know if the non-resident pays tax in Canada, whether GST or HST will be charged, the address and other contact information of the non-resident person or non-Canadian partnership, where the payments will be sent, and even the currency of the payment. These, and questions like these are needed in order to make a taxable supplier determination.

While we agree that representation from a non-resident person or non-Canadian partnership concerning its status as a taxable supplier is relevant, we do not believe that this declaration alone will normally represent adequate due diligence. Depending on the circumstances and the relationship between the parties, additional questions such as those mentioned above could be used by a claimant to help determine whether a non-resident person or non-Canadian partnership is a taxable supplier. Such questions are also necessary for the claimant to ensure that payments to a non-resident person should not be subject to withholding tax.

Question 4 - Prepaid Rent

For a property lessor, the interaction of subparagraph 12(1)(a)(i) and paragraph 20(1)(m) of the *Income Tax Act, Canada* generally results in amortization of prepaid rents over the term of a lease agreement. In technical interpretations 9924585 (November 15, 1999) and 9909965 (September 7, 1999), CRA was asked to comment on the treatment of the prepaid rent received prior to a sale of the underlying property subject to the lease. CRA's view was that when prepaid rents covering a period of 20 years are received by a taxpayer, the prepaid rents may be considered proceeds of disposition of a property rather than prepayment of rent. We invite CRA to confirm the views expressed in these two technical interpretations and whether prepaid rent covering a 20-year period received prior to an actual sale of the property may be considered proceeds of disposition of a property by the seller.

Response by CRA:

In Rulings document 9909965 we stated:

"…the so-called "pre-paid rent", which covers a period of 20 years, may be considered proceeds of disposition, rather than a prepayment of rent. However, this determination requires a review of all the facts and circumstances." That position was restated in document 9924585.

Unfortunately, we cannot answer the question since it would require an analysis of a specific fact situation. We would want to understand the nature of the relationship between the parties and the purpose of the series of transactions and we would have to examine the documentation before we could offer an opinion on the tax consequences.

Question 5 - Settlement Date

In recently cancelled IT-133 *Stock Exchange Transactions Date of Disposition of Shares* (November 30, 1973), CRA said that the sale of shares for tax purposes occurs on the "settlement date" as determined by the rules of a stock exchange where the trade takes place. Typically, the "settlement date" on a disposition of shares is two to three days subsequent to the trade date. We invite CRA to confirm that, notwithstanding cancellation of the IT, it considers the settlement date to be the date of disposition of shares for tax purposes.

Response by CRA:

We confirm that, notwithstanding the cancellation of IT-133 *Stock Exchange Transactions – Date of Disposition of Shares*, the CRA considers the settlement date to be the date of disposition of shares for income tax purposes.

Question 6 - Review of Corporate Tax Returns at the Initial Assessment Stage

Recently, CRA began reviewing T2 returns for large corporations at the initial assessment stage soon after a return is filed. This review at the initial assessment stage is separate from a regular audit, but the requests for information from the Tax Services Office (TSO) are often extensive and elaborate. Members report receiving requests for:

- An explanation why the amortization of tangible and intangible assets reported on Schedule 1 does not agree with the amounts shown on the General Index of Financial Information (GIFI) or the amounts reported on the taxpayer's financial statements;
- An explanation why the amount of reserves added back or deducted on Schedule 1 does not agree to the GIFI or the amounts reported on the financial statements;
- A detailed breakdown of all lines included on Schedule 1; and
- Submission of a revised Schedule 8 because the "claimed CCA in certain classes exceeded permitted rates" and "recapture information is incomplete."

When the affected taxpayers questioned the practices with the TSO or Large File Case Manager (LFCM), the explanation was that the new process allowed CRA to gather data in a more timely fashion for risk assessment purposes. One LFCM explained that he has no control over this practice. Hence, we invite a discussion of the following:

a) How does this risk-assessment practice fit with the risk-based audit approach being introduced by CRA? This practice seems to make the risk review performed by the TSO and LFCM duplicative.

Response by CRA:

CRA utilizes a risk-based approach to risk assess each Large File entity group annually, the results of which will affect compliance activity. This process is carried out by the LFCM situated in the TSO. As we move towards currency, we do expect that additional information will be requested by the LFCM in order to provide a more accurate risk assessment. There is, however, a pre-audit check by our initial assessing branch to ensure all fields are filled out correctly, etc.

b) An initial assessment by CRA that differs from the return as filed by the taxpayer will require the taxpayer to file a notice of objection and appeal before the issues are even reviewed by the LFCM. This seems premature at best and an unnecessary waste of resources at worst for both taxpayers and CRA. Please explain the policy of compelling taxpayers to file a notice of objection and appeal before its regular full-scope audit commences.

Response by CRA:

Upon filing a tax return, there are certain validations that are done by CRA initial assessing systems at the Taxation Centres. In some situations, if there is a discrepancy, the initial assessing system may automatically make a change to the return as filed. For example, in some situations involving carryover balances, if the final balance from the previous year does not match the opening balance of the current year, the system may automatically change the current year opening balance to match the prior year ending balance. This process is outside of the audit function. As the CRA utilizes the Approach to Large Business Compliance to risk assess and then develop a tailored compliance approach there is no absolute certainty that any compliance activity may occur let alone a full-scope audit.

c) Why is this initial review separate from and outside the control of the LFCM?

Response by CRA:

In the situation detailed above involving the Taxation Centres (i.e. part b), the review is done automatically by the CRA initial assessing systems. In the other case (from part a), the LFCM was the person that made the request and performed the review in order to assess the risk of non-compliance.

d) Why is this practice appropriate for large corporate taxpayers that are subject to perennial, recurring audits?

Response by CRA:

The CRAs Approach to Large Business Compliance calls for an annual risk review of large file taxpayers. The results of this risk review will determine the CRAs compliance approach. Tailored compliance approaches will vary from full scope audits to limited compliance assurance reviews, which means not all large taxpayers may be audited every year.

Question 7 - CRA Audit Practices — Taxpayer Field Experience

CRA and large taxpayers share a common interest and goals in promoting a smooth and efficient audit. The goals include:

- Ensuring that audits are current;
- Avoiding the use of waivers to extend the audit period unnecessarily or habitually;
- Focusing audit queries on high-risk compliance issues;
- Using accepted audit sampling procedures to expand stretched resources;
- Maintaining transparency in decision-making and the determination of tax positions;
- Promoting timely, consistent, and effective issue resolution;
- Deploying human resources as effectively as possible; and
- Maximizing cost controls.

Over the course of the last several years, CRA has developed new audit approaches based upon an enhanced relationship with large taxpayers and a risk-based audit approach. TEI supports CRA's new audit approach not only because of the common interest and shared goal of promoting efficiency, but because it promotes certainty of tax treatment sooner. That said, many large taxpayers have experienced behaviours seemingly at odds with the shared interests and goals. Examples include:

a) LFCMs are declining to discuss issues (or assert control over certain issues), saying they lack authority to make a decision in respect of subject matter. This suggests that issue resolution may be increasingly managed by CRA Headquarters in Ottawa as opposed to the TSOs. TEI believes that the objectives identified above can be advanced only if the LFCM is empowered to make decisions on issues and taxpayers are able to communicate directly with the decision-makers.

b) Auditors are asking for information on behalf of an undisclosed CRA source or seeking opinions or advice from CRA Headquarters without communicating the issue to the taxpayer or informing the taxpayer of the request. Where an opinion or advice is solicited, the TSO is generally bound by the Headquarters decision even though the taxpayer had little or no input into the development of the facts upon which the opinion is based.

c) Many auditors and LFCMs assert that they have no jurisdiction over specialty areas (*e.g.*, SR&ED, International or Tax Avoidance matters). Thus, there seems to be no overriding coordinator or decision-maker.

d) The scope and nature of the tax treatment of items seem to change dramatically from previous years (*i.e.,* fewer adjustments are proposed, but high-level conceptual challenges to a taxpayer's filing position are asserted with minimal or no apparent technical analysis). Examples include challenges to reclassify amounts long treated (and frequently reviewed) as current expenses into capital items or challenges to the longstanding (and frequently reviewed) classification of capital items into longer-lived capital asset pools.

e) Adjustments are proposed without discussion or explanation of the technical position despite requests for the rationale, which leaves taxpayers questioning the quality of the audit or propriety of the asserted position. Without discussion, the position can seem arbitrary, and may be a consequence of the Tax Earned by Auditor (TEBA) metric.

f) Information requests or proposals for adjustments are submitted shortly before a taxation year becomes statute barred.

g) Certain audit queries seem intended to audit the taxpayer's financial statements rather than the tax returns (*e.g.*, there are instances where an auditor is verifying account balances in audited financial statements rather than trying to understand the adjustments on the tax returns to the financial accounts and the rationale for the adjustments).

h) Requests are made for significant amounts of data as opposed to relying on sampling where practical (*e.g.*, requests for all professional fee invoices). In addition, information requests require taxpayers to produce enormous amounts of data within an abbreviated time frame. Response times should be reasonable and proportional to the volume of information requested.

i) Some auditors have refused to make taxpayer-favourable consequential changes and adjustments in subsequent years, even where the changes flow directly from an accepted audit adjustment to an earlier period. Instead, taxpayers are compelled to file amended returns to claim the consequential adjustments.

In addition to a general discussion of the member perceptions of audit behaviours and whether those behaviours are counterproductive to the shared goals of expeditious audits, transparency, and an enhanced relationship, TEI invites a discussion of the following**:**

a) In connection with the new risk-based audit approach, have quality control reviews been performed on the audit files since the approach was adopted? If not, will the quality control review be conducted on all files or all files above a certain size? Will new roles be created within CRA to conduct the quality control reviews independently of the field auditors?

Response by CRA:

The CRAs Approach to Large Business Compliance calls for an annual risk review of large file taxpayers. The results of this risk review will determine the CRAs compliance approach. Tailored compliance approaches will vary from full scope audits to limited compliance assurance reviews, which means not all large taxpayers may be audited every year.

b) Can CRA confirm whether the TEBA metric has been eliminated, as announced at the May 2012 TEI Annual Conference? If so, what measures will the Agency employ internally and for reporting its activities to other parts of the Government (*e.g.*, Finance, Parliament, and the Auditor General)?

Response by CRA:

The TEBA metric is still used to measure estimated compliance results. The CRA reports based on Fiscal Impact, which takes into account various factors, one of which is TEBA.

c) What other changes are being implemented at Headquarters and the TSOs to support the risk-based audit initiative?

Response by CRA:

In the future, our Industry Specialist Services section and Industry Coordinating Offices will have a greater involvement in the risk assessment of taxpayers in certain industries. This will improve the technical capacity and commercial awareness of our auditors when dealing with industry specific issues. Furthermore, all risk ratings by the TSO will be calibrated at the regional level to ensure consistency and accuracy within the region; and then again will be subject to calibration at the national level by HQ's Calibration Committee to ensure national accuracy, consistency and quality.

Question 8 - Reporting of Payments in Respect of Construction Activities — Section 238 of the Income Tax Regulations:

Under paragraph 238(2) of the *Income Tax Regulations*,

> *Every person or partnership that pays or credits, in a reporting period, an amount in respect of goods or services rendered on their behalf in the course of construction activities shall make an information return in the prescribed form in respect of that amount, if the person's or partnership's business income for that reporting period is derived primarily from those activities.*

According to Technical Interpretation 2000-0016205 — *Payments to Contractors* (October 4, 2000), a joint venture is not a person or partnership for tax purposes and, as a result, cannot produce and file T5018 (*Statement of Contract Payment*) slips (*i.e.*, the prescribed information return required to comply with paragraph 238(2)). In CRA's view, each member of a joint venture that meets the test of being a partner or partnership is required to report payments made to contractors providing construction goods or services.

Consider the effect of CRA's position in the following examples:

Example 1:

Canadian companies A, B, and C form joint venture ABC (owned 40 percent by A, 40 percent by B, and 20 percent by C) to provide construction services to a client. According to the Joint Venture Agreement governing ABC's operations, the joint venture will keep its own books and records, have a separate bank account, and sign all agreements with the client and suppliers. The joint venture is also responsible for paying all suppliers. At the end of each year, each member of the joint venture is allocated its portion of the revenues and expenses from the joint venture.

During construction, the joint venture subcontracts and pays $2,000 (HST included) to a Contractor to perform a portion of the construction services. Under Section 238 of the *Income Tax Regulations*, each company in the Joint Venture is required to produce a T5018 information slip for its pro rata share of payments made to Contractor. Thus, Company A is required to produce a T5018 slip for Contractor reporting $800 paid; Company B is required to produce a T5018 slip for Contractor reporting $800 paid; and Company C is required to produce a T5018 slip for Contractor reporting $400 paid.

Since the supplier was paid by the joint venture, the required payment information for each payee (including amounts paid, business number, or business address) is not available in each co-venturer's financial reporting or accounts payable system. As a result, manual intervention is required for each co-venturer to gather the information and report it on a T5018. It is unclear whether or how reporting the information on multiple slips by co-venturers enhances the accuracy of the information reported to CRA or to the Contractor or promotes compliance by the Contractor.

To increase the reporting efficiency of payers, enhance the capability of CRA to match payments, and promote compliance by subcontractors to joint ventures, would CRA consider affording the same flexibility under section 238 of the *Income Tax Regulations* as is currently permitted under the *Excise Tax Act* (ETA)? That is to say, although a joint venture is not considered a "person" under the ETA, rules of administrative convenience permit the members of a joint venture to elect an "operator" for the joint venture. The operator remits the GST or HST applicable to supplies made by the joint venture and also claims the input tax credits for amounts paid to suppliers. Under TEI's proposal (and assuming A is named the operator), Company A would produce one T5018 slip for Contractor to report the total $2,000 amount.

Example 2:

Assume the same facts in Example 1 except that the Contractor is also a joint venture DE composed of two co-venturers with Company D owing 60 percent and Company E owning 40 percent. The Joint Venture Agreement between companies D and E names Company D as the operator. Joint Venture DE invoices Joint Venture ABC for the construction services performed for an amount of $2,000 (HST included). Under Section 238 of the *Income Tax Regulations*, Company A is required to produce a T5018 slip for Company D to report a payment of $480 and another T5018 slip for Company E to report a payment of $320. Similarly, Company B will be

required to produce a T5018 slip for Company D reporting payment of $480 and another T5018 slip for Company E to report payment of $320. Finally, Company C will be required to produce a T5018 slip for Company D reporting a payment of $240 and another T5018 slip for Company E to report a payment of $160.

As noted in Example 1, the detailed information (including the share percentage, business address, and business number) to produce the T5018 will not be kept in any of the payers' financial systems. To enhance the quality of the information reported to the payees and CRA and promote compliance by payees, would CRA consider permitting the joint venture to report the payments made to contractors for construction services based on the entity that issues the invoice (*i.e.,* the joint venture)? Under TEI's proposal, Joint Venture ABC would be required to produce one T5018 slip for Joint Venture DE to report the total amount paid of $2,000. The name and address of the joint venture DE and the joint venture operator's business number (*i.e.,* Company D's business number) would be reported on the T5018 slip.

We invite CRA's reaction to TEI's proposals.

Response by CRA:

CRA agrees this proposal has merit and should be further explored. The Debt Management Directorate of the Taxpayer Services and Debt Management Branch will take the lead on this initiative and engage CRA stakeholders.

CRA proposes the TEI nominate a representative to participate on a working group to assess the risks and feasibility of such an administrative policy and provide a progress update at the May 2013 TEI meeting.

Question 9 - Real Time Audits

In 2002, CRA announced an initiative to afford taxpayers an opportunity to obtain a real-time audit on material, completed transactions. For taxpayers, the real-time audit affords certainty about the treatment of a specific transaction at a much earlier date; for CRA, the audit of the transaction can be conducted more efficiently since the taxpayer's personnel and records are fresh and available. Is CRA still receptive to performing real-time transaction-based audits when requested by the taxpayer?

Response by CRA:

The Real-Time Audit program is available to taxpayers in the Large Business community. For details on the prerequisites or process to be followed for the Real-Time Audit program, please see publication RC4024 Rev. 02 *Enhancing Service to Large Businesses* (RC4024 - Enhancing Service to Large Business).

Question 10 - Bilateral Safe Harbours

In the 2010-2011 Advance Pricing Agreement Program Report (hereinafter the "APA Report"), CRA states that there are certain transactions that will not be accepted into the APA program because they are outside the scope of the APA Program (*e.g.*, one-time events or transactions such as business restructurings). The APA Report also shows a decline in the number of files accepted into the program, an increase in the number of files withdrawn, and an increase in the average elapsed time for completion of an APA. Many cases that are not accepted for the APA process will likely find their way to the Mutual Agreement Procedure (MAP) process because of disputes over transfer pricing. Indeed, this is borne out by CRA's 2010-2011 MAP Program Report which shows that the MAP process is experiencing an increasing number of cases and an increase in average time to completion, likely because of increased audit activity without a corresponding increase in MAP resources.

Given the lack of budget resources to accommodate the growth in cases and the increased scrutiny of transfer-pricing issues by CRA (and by tax authorities in Canada's principal trading partners), we invite a discussion of the prospects for using bilateral safe harbours for common, routine or low-risk transactions. Transfer prices established under such rules would be automatically accepted by the tax administrations because the tax administrations would have negotiated and adopted agreements in respect of the "safe harbours" (as outlined in the June, 2012, OECD Discussion Draft on the proposed revision of the section on safe harbours in the OECD transfer-pricing guidelines).

The benefits of adopting a safe-harbour approach to transfer-pricing matters include:

- Redirecting tax administrations' resources to more complex, high risk, and more time consuming transactions;
- Increasing certainty for taxpayers that the "safe harbour" transfer prices will be accepted by the tax administrations; and
- Reducing compliance costs for taxpayers and audit costs for tax administrations.

We invite CRA's views on using bilateral safe harbours.

Response by CRA:

The 1995 version of OECD Transfer Pricing Guidelines expressed a negative view of safe harbours. The clear disadvantage of country-specific unilateral safe harbours is that they may not be recognized as producing an arm's length result by other tax administrations.

Using safe harbours to meet the transfer pricing requirements for one country may expose taxpayers to controversies and lead to potential double taxation if tax administrations adopt different views on the application of safe harbour rules. It could also absorb valuable tax administration resources for audit and dispute resolution (including MAP and litigation).

The current guidance is largely silent about the possibility of bilateral safe harbours. The introduction of bilateral and multilateral safe harbor provisions in the June 2012 OECD Discussion Draft on the proposed revision of the section on safe harbours in Chapter IV of TPG signals that there may be a shift in thinking on this subject. The proposed bilateral provision essentially eliminates the possibly of double taxation. Two tax administrations would be able to set rules and procedures that would appropriately reflect the tax administrations' concerns about the acceptable degree of approximation to arm's length prices.

The three types of MOUs for low-risk functions (distribution, manufacturing, and R&D) proposed by the Discussion Draft address cases that absorb a large portion of our resources, taking time and effort when handled on a case-by-case basis.

Distinct advantages of such negotiated bilateral safe harbours would be compliance relief, administrative simplicity, and tax certainty. Safe harbours benefit not only taxpayers but also tax administrations by shifting scarce audit and examination resources from smaller taxpayers and less complex transactions, which may be resolved on a consistent basis, to more complex, medium & high-risk cases.

Despite such advantages, taxpayers and tax administrations must be mindful of potential disadvantages to safe harbour rules. For example, tax administrations may be faced with additional compliance risk surrounding the use of safe harbour rules for inappropriate tax planning purposes. In that regard, tax administrations will want to maintain the ability to ensure that distribution, manufacturing, and R&D functions are actually performed as low-risk activities, which could absorb a large portion of compliance resources. Also, safe harbour rules could lead to increased complexity and compliance burden in situations where the taxpayer has transactions with related parties in more than one jurisdiction, or if it engages in more than one type of transaction with their foreign resident related party.

This project is still under discussion/debate at OECD WP 6. The shortcomings of safe harbors may be solved with bilateral measures within a properly designed MOU.

Question 11 - Transfer-Pricing Adjustments under Paragraph 18(1)(a)

In denying the deductibility of items charged to Canadian corporations via a transfer-pricing adjustment, CRA has increasingly been reassessing taxpayers pursuant to paragraph 18(1)(a) rather than section 247. As a result, taxpayers face an increasing number of cases of double taxation because the Competent Authority in the other contracting state will not recognize an adjustment under paragraph 18(1)(a) as a Canadian transfer-pricing matter. Can CRA comment on the policy behind reassessing under paragraph 18(1)(a) as opposed to section 247?

Response by CRA:

There is no policy encouraging the use of paragraph 18(1)(a) as opposed to section 247, and we are not aware of this occurring as a matter of course.

The *Income Tax Act* requires that section 247 be considered in all situations involving transactions with non-residents with whom a taxpayer does not deal at arm's length. In situations where paragraph 18(1)(a) or another section of the Act is used as opposed to section 247, it is likely that there is no doubt as to the arm's length quantum of the transactions, but there are specific restrictions under other provisions of the Act that were applied. Such situations are usually not subject to negotiations under Article 9 of most tax treaties because allocation of profit is not in question.

If paragraph 18(1)(a) or another section of the Act was used as opposed to section 247 and it is clear that the issue is that of allocation of profit between jurisdictions, the adjustment could qualify for negotiation under Article 9 or Article 25.

Question 12 - Risk-based Audit Process

In 2011 CRA announced it was instituting a risk-based approach to audits whereby CRA would meet with senior representatives of the taxpayer to:

- Explain the redefined risk-based approach to large business compliance and how the approach affects taxpayers;
- Share CRA's findings and observations noted during the taxpayer's risk assessment; and
- Understand how the taxpayer manages tax risk at its highest governance levels.

With the first round of meetings with taxpayers complete, TEI has the following questions in respect of the approach:

a) Would CRA share its general observations, findings, trends, or conclusions with respect to the state of tax-risk governance?

Response by CRA:

The Approach to Large Business Compliance is being phased in over a five-year period commencing in 2010-11. During this period, CRA officials conduct meetings with Large Business enterprises' senior executives to discuss tax compliance and risk of non-compliance associated with their business activities, governance regime, internal controls, and inherent and behavioral risk factors affecting their risk segmentation. At this point in time, it is still premature

to draw general conclusions on the state of tax-risk governance. We have noted that there are taxpayers with no formal method of identifying and responding to corporate tax risk. These taxpayers are informed that this lack of tax risk governance, in the absence of other mitigating controls, will weigh negatively on their overall risk rating with the CRA.

b) In the interests of transparency, will CRA consider publishing a document outlining and discussing its review and risk-assessment process?

Response by CRA:

The CRA is of the view that the success of the Approach to Large Business Compliance is based on a well-informed, transparent tri-partite relationship. Providing further information on the risk assessment process in a published document would be in the best interests of all parties. As this initiative unfolds, the CRA will be in a better position to further communicate the risk-assessment process.

c) Has the first round of meetings with taxpayers led CRA to consider changes to its risk-assessment process and will it publicly announce the changes? Will affected taxpayers be apprised of changes to the scope of the risk-management approach that apply to their cases?

Response by CRA:

There have been no major changes in the risk assessment process. As expected, we are fine-tuning our risk assessment process and exploring ways to leverage technology in our drive to a more automated state and enhanced accuracy and efficiency.

d) Will CRA review the risk assessment with the affected taxpayer, including discussing the criteria and factors used to determine a taxpayer's risk rating? If a taxpayer disagrees with its risk-assessment rating, what steps can it take to address its concerns?

Response by CRA:

During the face-to-face meetings, the taxpayer is informed of their risk rating. At that time, they will be informed of why they have attained this rating and what can be done to reduce the rating in the future. It is, however, not a debating forum where taxpayers can "negotiate" a better rating.

e) Assuming a taxpayer's risk profile can change over time, will CRA revisit its risk-assessment ratings on a regular basis? If so, how often will the assessment be revised? Will CRA meet again with the taxpayer's senior executives to review the revised rating?

Response by CRA:

Each taxpayer is risk assessed on a yearly basis based on the latest available information. Currently, as for the meetings, CRA officials are meeting with each Large Business taxpayer and discussing their individual risk rating over the 5-year phase-in period. Once this round of meetings is completed, CRA will consider revisiting taxpayers to review their rating.

f) Can CRA provide any details about the factors affecting a taxpayer's risk rating?

Response by CRA:

The CRA's Approach to Large Business Compliance (ALBC) discloses the criteria used in risk evaluating all taxpayers. The large business population is being risk assessed using several techniques, such as:

- Undertaking a historical analysis of audit results and a corresponding analysis of behavioural patterns;
- Examining every large business taxpayer in their TSOs and assessing their risk based on analysis and local knowledge;
- Conducting issue-based risk assessment to determine whether taxpayers are participating in tax planning schemes;

Additionally, consideration is being given to a number of risk factors, such as:

- Audit history;
- Industry sector issues;
- Unusual and/or complex transactions;
- Corporate structure;
- Major acquisitions and disposals;
- International transactions;
- Corporate governance;
- Participation in aggressive tax planning; and
- Openness and transparency.

These factors will vary by taxpayer and the taxpayers will be advised as to the factors considered in their risk assessment when the ALBC approach is discussed, in the face to face meeting that the CRA will hold with them. All factors are considered collectively in arriving a global risk rating for the entity.

g) Will CRA inform other tax jurisdictions (provincial or foreign) of its findings in respect of a taxpayer's risk rating?

Response by CRA:

CRA has not shared any information related to any taxpayer's risk rating with any other tax jurisdiction. In the future, any request made by another tax jurisdiction will be reviewed by the CRA on a case by case basis, while respecting the Provision of Information laws outlined in section 241 of the *Income Tax Act* and the relevant international exchange of information protocols.

h) What guidance has been provided to the TSOs to ensure that the objectives of the new audit approach are applied consistently by all the TSOs?

Response by CRA:

Given the prominence of risk assessment and the impact of risk rating on the design and implementation of the Approach to Large Business Compliance, a national risk assessment calibration committee has been formed to supplement the regional calibration committees thus ensuring national and regional consistency.

Question 13 - Partnership Information Returns

In February 2012, the CRA issued revised Form T5013 *Partnership Information Return* with a modified SCH 50 *Partner's Ownership and Account Activity*. The revised form requires the partnership to report reconciliations of each partner's respective Adjusted Cost Base (ACB) and At-Risk Amount (ARA). The form's requirements apply to all partnerships regardless of whether the partners are related or unrelated.

In prior years, the SCH 50 disclosure involved a "Reconciliation of Partner's Capital Account," an amount that can be reconciled directly to the partnership financial statements. In other words, since the partnership financial statements and capital accounts are both maintained by the partnership, the capital accounts are easily tracked and reported.

Where a partnership is held by non-arm's length partners, the information required to complete the revised Schedule 50 is often accessible. When unrelated partners own interests in a partnership, however, the information required by the revised SCH 50 may not be (and often is not) available. The filing of the T5013 (and thus the revised SCH 50) is generally the responsibility of the managing partner.

We invite CRA's comments on the following questions:

a) Since the ACB and ARA amounts are unique to the partners and are not partnership attributes, is there a requirement that partners share this information with the managing partner?

b) If arm's-length partners do not provide the information when the managing partner requests it, will an incomplete SCH 50 be accepted by CRA?

c) Does CRA expect the partnership or the partner to prove the accuracy of the amounts reported on the SCH 50 in respect of ACB or ARA? Who bears the burden of penalties and interest if CRA determines the amounts were incorrectly reported — the partner(s) or the partnership?

The purpose of the new requirements for SCH 50 and CRA's use of the information is unclear. More important, since the partnership does not track that information and each partner maintains the historical ACB and ARA information with respect to its respective partnership interest, TEI recommends eliminating the requirement that partner's ACB and ARA be disclosed on the partnership return.

Response by CRA:

The dollar amounts flowing through partnerships have increased dramatically in recent years, and as a result, the Government is seeking to assess risk accordingly.

To help address the concerns raised on ACB and ARA calculations, the CRA published clarifications on its website to help partnerships report partner details during the transition period. To ease concerns about providing updated ACB and ARA information, we will accept returns filed by the due date if they contain the 2009 revision (used for the tax year 2010) or the 2011 version (used for tax year 2011) of schedule 50 with complete information on partner identification and the annual transactions between partners and the partnerships.

There is no requirement that partners share their ACB and ARA calculations with the managing partner. The CRA will not impose penalties on T5013 returns for 2011 or 2012 fiscal periods, filed by the due date, with incomplete ACB and ARA information on the schedule 50.

For subsequent years, the CRA is working to modify the T5013SCH50 to only request information that is the responsibility of the partnership with a target publication date of June 2013. CRA will request ACB and ARA information directly from partners, as required.

Question 14 - Competent Authority

Article IX of Canada's Tax Conventions generally imposes a limitation period on transfer-pricing adjustments. Where CRA makes or proposes an adjustment, the other contracting state is required to make the appropriate adjustment to the profits of the associated enterprise in that other state, but only if the competent authority of the other state is notified within a prescribed period of time.

What is CRA's policy with respect to proposing transfer-pricing adjustments after the limitation period on transfer-pricing adjustments specified in the relevant Tax Convention has passed?

If CRA's policy is not to propose transfer-pricing adjustments after the limitation period, does CRA support protective notifications being made immediately prior to the expiration of the limitation period when CRA did not have the time to complete the audit? Would the previous answer be the same in a situation where the information to determine the quantum of a potential transfer-pricing adjustment is not available prior to the expiration of the limitation period?

Response by CRA:

Whether or not a treaty bars Canada from raising an adjustment depends on the particular treaty.

In particular, a distinction has to be made between notification time limits (noted in the question) in the Canada-U.S. Tax Convention (1980) that is designed to protect a taxpayer's treaty rights, and time limits in other treaties which bar a State from raising an adjustment after a specified period. In addition, some treaties have time limits which a resident of a Contracting States must respect when making a request for competent authority assistance in order for a Contracting State to accept a case.

With the Canada –US treaty, a Canadian reassessment is only subject to domestic statute barred rules. The six year notification time limit noted in this treaty is only for the purpose of protecting a taxpayer's treaty rights. As long as the appropriate State is timely notified (within six years of the end of the taxation year) of a potential adjustment by the other State which will require correlative relief, then the State asked to provide relief can do so notwithstanding any domestic time limitations as long as notification has been received within the six year notification limit. This ability for both States to override domestic statute barred limits as long as notification is timely is almost exclusive to the Canada-US treaty (the only other exception is the Canada-UK Income Tax Convention which has a similar provision applicable only to the Associated Enterprises article). Therefore, the six year notification period in the Canada-US treaty is aimed at protecting taxpayers' treaty rights by keeping years open, and has nothing to do with preventing a State from raising an adjustment.

So how does the six year notice rule in the U.S. treaty match with Canadian domestic rules? The Canadian domestic period to reassess for international transactions involving related parties is generally seven years. There has been some question as to fairness to taxpayers where the taxpayer is not notified of a potential adjustment until after the six year period, and timely notification for the taxpayer is impossible, for example. However, the Canada-US treaty provides that the States may still provide relief notwithstanding a late notification as long as the taxation year remains open domestically. This can be achieved by filing a domestic waiver in Canada and/or by seeking a statute extension in the U.S.

The situation just described for the Canada-US treaty does not apply for all treaties. Other Canadian treaties bar Canada from raising an adjustment beyond a specified treaty period,

notwithstanding that the CRA may still have time under domestic rules. For example, the Associated Enterprises article of the Canada-Netherlands treaty bars either state from raising a transfer pricing adjustment six years after the end of a taxation year, except for the case involves in fraud or wilful default.

Some Canadian treaties impose time limits on the taxpayer with respect to the timeliness of receiving application of a case. This type of limit would be found in the Mutual Agreement article of a treaty. Using the Canada-Netherlands example again, Article 25 of that treaty requires that a taxpayer presents the case to the appropriate State within two years from the first notification of the action (i.e., Notice of (re)assessment for Canada) resulting in taxation not in accordance with the provisions of the treaty.

It is important to note that the requirement to notify the Competent Authority of another jurisdiction is on the taxpayer who will become subject to double tax, not the CRA. If a taxpayer is aware that they will be in double tax situation prior to the end of the notification period, the onus is on him to make such a notification.

Question 15 - Referral to Tax Court

Sections 173 and 174 of the Act allow a determination of specific tax issues by referral of questions of law, fact, or mixed law and fact to the Tax Court of Canada. Section 173 affords the Minister and taxpayers the ability to resolve contentious issues by agreeing to place that issue before the Tax Court at any stage in the dispute resolution process, including during the audit. Given the magnitude of the amounts at stake and the complexities of the tax returns of large taxpayers, section 173 is an efficacious means for the Minister and large corporate taxpayers to obtain a Tax Court judgment to settle disputes which may have ramifications in succeeding tax years.

Since section 173 requires the Minister and the taxpayer to agree to an early referral to the Tax Court, what factors does the Minister consider in evaluating whether to proceed by way of a section 173 (or section 174) referral to the Tax Court?

Will CRA disclose how many applications it has received from taxpayers in respect of proceedings via section 173 or section 174? Of the applications received, can CRA disclose how many have been allowed?

Response by CRA:

The opportunity to agree with a taxpayer to refer a question or to refer common questions to the Tax Court of Canada is considered on a case by case basis. Each case is considered on its own merits. The CRA has either agreed with a taxpayer to refer a question or chosen to refer common questions to the Tax Court of Canada in several cases which now form part of jurisprudence on this issue.

Question 16 - Corporate Online Services

Corporate taxpayers welcome and appreciate CRA's online services such as the *Represent a Client* or *My Business Account* web platforms. We invite a discussion of the prospects for expanding those services to include:

a) Linking associated companies so that payments may be transferred between companies at the taxpayer's initiative;

Response by CRA:

A policy exists today which does not permit the transfer of funds between companies at the taxpayers' initiative. The policy is there to avoid situations where one legal entity is making decisions for another. In addition, CRA wants to avoid accounting corrections such as penalties and interest on misdirected payments.

The CRA has reviewed this request in the past and have drawn the conclusion that the negative impacts that this could potentially have on taxpayers are greater than the benefits of directing a payment.

b) Amending corporate income tax returns through an online function similar to that available for individuals; and

Response by CRA:

The CRA is currently at the initial stages of developing a means to use the MyBA portal and the corporation internet filing service to submit an amended T2 return. The current target implementation is April 2014.
Since October 2012, corporations and their representatives can use approved tax software to submit an amended return in bar-code format.

c) Printing customized remittance forms (through either the *Represent a Client* or *My Business Account* web platforms) to attach to the wire-transfer instructions to the financial institution making the payment.

Response by CRA:

Remittance vouchers are not available for download on the CRA Web site due to the technical requirements of the Magnetic Ink Character Recognition (MICR) technology they use. We use MICR technology and personalize these forms to ensure that your payment is applied to the correct account. Financial institutions will not accept payments submitted with photocopies of these forms and vouchers, since photocopies do not contain magnetic ink.

Question 17 - Administration of Trusts

a) CRA's current practice is to assign a trust identification number when the initial *Trust Income Tax and Information Return* (T3) is assessed. Would CRA consider permitting a trust, especially a mutual fund trust, to apply for a trust number upon the trust's formation? Assigning a trust number prior to the initial assessment would aid both CRA and taxpayers in identifying the trust when necessary prior to the date of the initial assessment.

Response by CRA:

CRA has examined the possibility of issuing a trust identification number prior to filing the first Trust Income Tax and Information Return (T3). We are currently in the process of making this option available. This feature is tentatively scheduled for April 2013 and the details concerning the criteria required and the application process will be available at that time.

b) Interest has been expressed in seeing the online services available to corporations expanded to include trusts. What are the prospects for permitting online access, *e.g.,* through the *Represent a Client* or *My Business Account* web portals, for trust administration, including mutual fund trusts?

Response by CRA:

The CRA is aware of the increasing interest in electronic services for the administration of trusts. In this regard, the CRA is reviewing the electronic services available to other business lines to determine the most efficient way to extend these electronic services for the administration of trust returns.

Question 18 - Non-Resident Employees Performing Services in Canada for a Non-Resident Employer - Regulation 102

Employers of non-resident employees performing services in Canada are subject to the same withholding, remitting and reporting legislation as for resident employees, even though the non-resident employee may be exempt from paying tax in Canada under a tax treaty. This issue was raised in the final report of the International Advisory Panel on Canada's System of International Taxation in 2008. Since then there have been no legislative changes affecting the requirements for non-resident employees.

Is CRA working on any policies or administrative practices that would ease the administrative burden for these employers and employees?

Response by CRA:

Yes, the CRA is looking closely at the different circumstances where a non-resident employer is required under the Income Tax Act and Income Tax Regulations to withhold and remit tax but our tax treaties reduce the non-resident employee's tax liability to nil.

The CRA introduced two new forms in 2010 and 2011, Form R102-R, *Regulation 102 Waiver Application*, and Form R102-J, *Regulation 102 Treaty Based Waiver Application - Joint Employer / Employee*, to streamline the application process for waivers of the withholding tax required under subsection 153(1) of the *Income Tax Act* and Regulation 102. Form R102-J can be approved retroactively up to 60 days prior to the date a complete waiver application is received, providing certain criteria are met.

Before the end of December, 2012, the CRA intends to finalize and post a new policy on its website for non-resident employers who send their non-resident employees to attend conferences in Canada for professional development. If certain criteria are met, the employee will not have to apply for and receive a waiver of the withholding tax and there will be no withholding or remitting required pertaining to the remuneration earned by the employee during the period of the conference. In addition, in some cases reporting of the remuneration on a T4 slip will not be required. Based on the current rules that remain unchanged as a result of this new policy, the employee will generally only be required to file a Canadian income tax return if they have tax payable.

The CRA recognizes the administrative burden faced by non-resident employers and non-resident employees in meeting reporting and withholding obligations when the employees are exempt from Canadian income tax under a tax treaty. The CRA is currently working towards a more comprehensive policy that will address these issues beyond situations for conference participants.