TAX EXECUTIVES INSTITUTE, INC.

EXCISE TAX QUESTIONS

Submitted to

CANADA REVENUE AGENCY
and
THE DEPARTMENT OF FINANCE

NOVEMBER 17 - 18, 2015

Tax Executives Institute, Inc. ("TEI") welcomes the opportunity to present the following questions on Canadian commodity tax issues for discussion with representatives of Canada Revenue Agency ("CRA") and the Department of Finance ("Finance") during TEI's November 17 - 18, 2015, liaison meetings. Please contact Lynn Moen, TEI's Vice President for Canadian Affairs, at 403-750-2278 or lmoen@walton.com, or Richard Taylor, Chair of TEI's Canadian Commodity Tax Committee, at 416-935-2568 or richard.taylor@rogers.ca if you have any questions about the agenda.[1]

TECHNICAL QUESTIONS

Question 1: Changes to Drop Shipment Rules
(CRA and Finance)

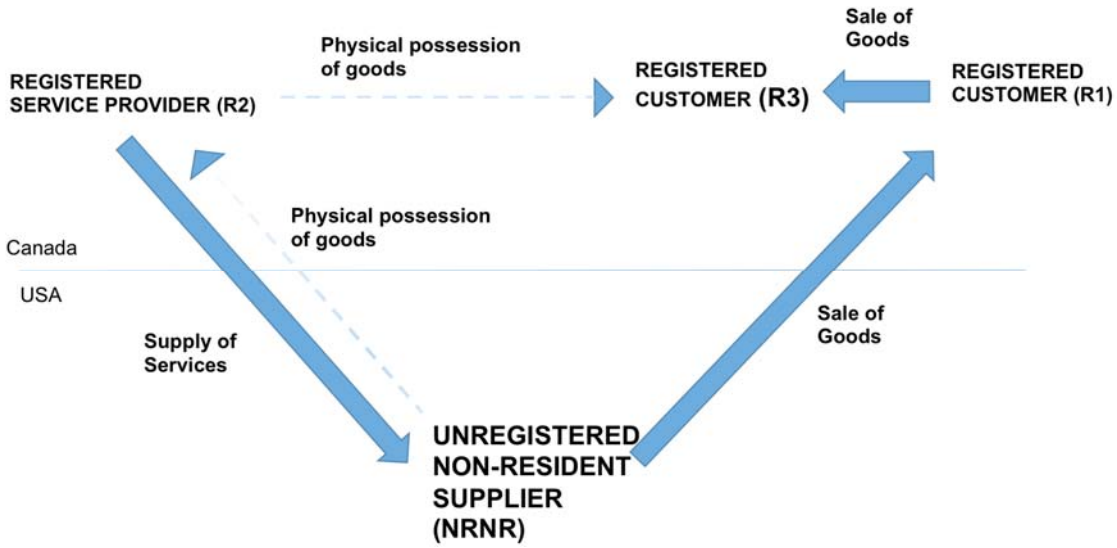
Please describe changes CRA or Finance are considering making to the drop shipment rules, particularly with respect to the requirement that physical possession of the property pass to the consignee.

Hypothetical

Canadian registrant ("R1") purchases goods from a non-resident, non-registered U.S. supplier ("NRNR"). The goods are to be delivered with INCO terms of Delivered at Place ("DAP") Canadian registrant and resident's ("R3") location. NRNR has further

[1] Unless otherwise noted, topics are for discussion at the meetings with both CRA and Finance. A written response is requested for questions directed to CRA.

work performed on the goods by Canadian registered supplier ("R2") before the goods are delivered to R3. R1 sells the goods to R3 immediately upon delivery at R3's premises. R1 owns the goods when the goods are sold to R3.



Can R1 provide a drop shipment certificate to R2, even though R1 does not physically touch the goods, to relieve NRNR from having to pay GST/HST on the supply of R2's commercial services made in respect of the goods?

Question 2: Guidance Regarding CRA Rulings and Interpretations
(CRA Only)

Please provide insight into CRA's rulings and interpretations process, and any patterns CRA has identified, to aid the mutual goal of expediting CRA rulings and interpretations:

A. Has the number of requests for rulings and interpretations increased each year?

B. For less complex industry ruling and interpretation requests, please identify any opportunities for improvement industry can take to ensure more timely rulings or interpretations. For example, has CRA noticed any recurring deficiencies in initial submissions that delay CRA's rulings or interpretations?

C. For complex industry ruling and interpretation requests, please provide guidance to improve the drafting of initial submissions. For example, do requests contain sufficient detail? Do requests contain too many irrelevant facts? Do requests clearly define the matters at issue?

D. Is CRA satisfied with requestors' level of participation after requests are submitted or does CRA believe requestors delay the issuance of rulings and interpretations by not replying to follow-up questions in a timely manner?

Question 3: Application of FET to the Sale of Marine Fuel for Use as Ships' Stores (CRA Only)

Please confirm CRA's policy regarding the application of Federal Excise Tax ("FET") to the sale of marine fuel for use as ships' stores.

Relevant Law

Subsection 23(1) (tax on various articles at schedule rates) of the *Excise Tax Act* ("ETA") states "whenever goods mentioned in Schedule I are manufactured or produced in Canada and delivered to a purchaser of those goods, there shall be imposed, levied and collected… an excise tax in respect of the goods at the applicable rate set out in the applicable section of that Schedule…."

Schedule I of the ETA provides the applicable rates of FET. Paragraph 9(a) states the rate for unleaded gasoline is $0.10 per litre, Paragraph 9(b) states the rate for leaded gasoline is $0.11 per litre, and Paragraph 9.1. states the rate for diesel fuel is $0.04 per litre.

Subsection 23(2) (by whom and when tax is payable) of the ETA states "where goods are manufactured or produced and sold in Canada, the excise tax shall be payable by the manufacturer or producer at the time of delivery of the goods to the purchaser thereof."

Paragraph 23(6) of the ETA states tax is not payable in the case of "goods mentioned in Schedule I that are purchased or imported by a licensed wholesaler for resale by him."

Section 68.17 (payment where use as ships' stores) of the ETA states "[i]f tax under Part III has been paid in respect of any goods and a manufacturer, producer, wholesaler, jobber or other dealer has sold the goods for use as ships' stores, an amount equal to the amount of that tax shall, subject to this Part, be paid to that dealer if that dealer applies for it within two years after that sale of the goods."

Hypothetical

A supplier holding an Excise Tax License "E" sells marine fuel to a trader/broker not currently licensed for excise tax purposes. Under the instruction of the trader/broker,

the supplier directly delivers the marine fuel to a designated foreign vessel for use as ships' stores. The title of marine fuel transfers from the supplier to the trader/broker in the flange of the foreign vessel, and the trader/broker sells the marine fuel to the foreign vessel. The foreign vessel provides a form K36A, Ships' Stores Declaration and Clearance Certificate, to the supplier.

A. Does FET apply to the sale of marine fuel from the supplier to the trader/broker when the supplier directly delivers the marine fuel to a foreign vessel entitled to an excise tax exemption?

B. If the sale of marine fuel to the trader/broker is on a tax paid basis, please confirm the trader/broker would be eligible to claim a refund of excise tax using form N15, Application for Refund/Rebate.

Question 4: Section 150 Elections for Canadian Branches of Foreign Banks
(Finance Only)

Would Finance support allowing Canadian branches of foreign banks and their Canadian-based subsidiaries to make elections under Section 150 of the ETA?

Relevant Law

The election under Section 150 of the ETA allows most intercompany charges within a "closely related group" to be tax-free.

Subsection 123(1) of the ETA defines "closely related group" to include a "registrant resident in Canada."

Subsection 132(1)(a) of the ETA provides branches of foreign banks are not deemed to be resident in Canada.

Subsection 123(1) does not allow a branch of a foreign bank to fall within the definition of a closely related group; however, the provision does include non-resident insurers as members of a "closely related groups."

The exclusion of Canadian branches of foreign banks from members of a closely related group denies those branches and their Canadian subsidiaries the opportunity to make Section 150 elections.

Request

The definition of a "closely related group" should be amended to include non-resident banks within that definition. For example, Subsection 123(1) could be amended to read:

> "Closely related group" means a group of corporations, each member of which is a registrant resident in Canada and is closely related, within the meaning assigned by section 128, to each other member of the group, and for the purposes of this definition,
>
> (a) a non-resident insurer that has a permanent establishment in Canada is deemed to be resident in Canada, ~~and~~
>
> (a.1) a non-resident bank that has a permanent establishment in Canada is deemed to be resident in Canada, and
>
> (b) credit unions and members of a mutual insurance group are deemed to be registrants;

This amendment would allow Canadian branches of foreign banks and their Canadian-based subsidiaries to enter into Section 150 elections.

Question 5: Use of CFIA Registration Numbers for Agriculture and Fishing Property (GST/HST) Regulations
(CRA Only)

Does CRA use the registration numbers assigned to certain types of animal feed by the Canadian Food Inspection Agency ("CFIA") to determine whether a feed product meets the criteria set out in the Agriculture and Fishing Property (GST/HST) Regulations (Part 2 to the Schedule)? If so, how does CRA evaluate the registration number to determine if it meets those criteria? Alternatively, if not, does CRA have any recommendations for suppliers of animal feed products to facilitate the identification of feed products as either a complete feed, supplement, macro-premix, micro-premix, or mineral feed?

Factual and Legal Background

Animal feed producers typically supply thousands of animal feed products and purchase a similar number of products from other suppliers for use as ingredients in

their manufacture of such animal feeds. Most of those products are regulated under the Feeds Act and Regulations and are registered with the CFIA.

All mixed feeds manufactured outside Canada; mineral feeds; converter feeds; micro-premixes; specialty feeds such as forage additives, viable microbial products, flavours, and mould inhibitors; milk replacers and any other substitutes for milk; fox feeds; single ingredient feeds listed in Part 2 of Schedule IV or V of the Feeds Regulations; and complete feeds, supplements, and macro-premixes for all livestock labeled with nutrient guarantee levels outside the ranges indicated in Table 4 (Schedule I) of the Feeds Regulations require registration prior to their importation, manufacture, or sale in Canada. Feeds for cattle, horses, sheep, goats, swine, poultry, fish, foxes, mink, and rabbits are regulated under the Feeds Act and Regulations.

Supplies of feed sold in bulk quantities of at least 20 kg or in packages containing at least 20 kg of complete feed, supplement, macro-premix, micro-premix, or mineral feed (other than a trace mineral feed) as defined in the Feeds Regulations and labeled in accordance with those Regulations are zero-rated if the feed is designed for rabbits or a single species or class of farm livestock, fish, or poultry ordinarily raised or kept to produce, or to be used as, food for human consumption or to produce wool as per Schedule VI, Part IV of the ETA.

There is much confusion in the animal feed industry over when a product meets the zero-rating criteria. Indirect tax practitioners without a background in animal science or chemistry generally lack the means to evaluate whether animal feed products meet these criteria.

Hypothetical

Supplier A produces a product commonly used as an ingredient in the manufacture of animal feeds as F100 Dairy Fat with CFIA registration number 580441. Supplier B produces a similar palm fat product used for the same purpose as F100 Dairy Fat with CFIA registration number 990911. Both products are used interchangeably as an ingredient in the manufacture of more complex feeds for dairy cattle.

Supplier A charges GST/HST on supplies of this product; however, Supplier B does not charge GST/HST on supplies of its product.

A large proportion of animal feed products purchased, manufactured, and sold by animal feed producers require registration with the CFIA. The task of evaluating whether a particular product meets the conditions set out in paragraphs (a) and (c) of Part 2 to the Schedule of the Agriculture and Fishing Property (GST/HST) Regulations

could be simplified greatly if CRA advised which products, via their registration numbers, meet those criteria.

Question 6: Changes to the Financial Institution GST/HST Annual Information Returns
(CRA and Finance)

Please discuss any changes CRA and Finance are considering for the Financial Institution GST/HST Annual Information Return following our meeting last February. Would it be helpful for TEI members to provide additional information addressing how that return could be simplified, combined with other existing returns, or eliminated?

Question 7: Double Taxation of Master Trusts Under the Pension Plan Rules
(Finance Only)

There was a great deal of confusion around the new pension plan rules when introduced by the Ministry of Finance in 2010. There is still confusion around the nature of the rules and CRA's interpretation of those rules as first pass audits are now being completed and the legislation is still relatively new.

One area of confusion revolves around direct supplies to a master trust. A master trust structure generally exists where an employer has a unionized work force represented by various unions or where an employer has acquired other companies. Master trusts allow the pension plans to invest their assets in a more efficient manner and thus significantly decrease administrative expenses.

Master trusts often pay fees, such as investment or management fees, directly from the funds they manage because this is the most efficient and easily traceable manner of allocation. Master trusts have done business in this manner since the introduction of pension plans. Similar to personal mutual funds, the investment or management fees are often adjusted directly to the value of the units of the master trust.

The new pension rules create double taxation. The fees paid directly by the master trust create a purported actual supply to the pension plans. Subsection 172.1(5) of the ETA also creates a deemed supply to the pension plan. Because master trusts are not eligible for tax adjustment notes, double taxation occurs, resulting in a direct cost to Canadian workers' pension plans.

A. Would Finance consider extending an election similar to the RC4615 Election or Revocation of the Election to Not Account for GST/HST on Actual Taxable Supplies to eliminate the double taxation of these actual and deemed supplies?

B. If this option is not available, what steps will Finance take to alleviate CRA's interpretation of this legislation and prevent the double taxation of these supplies?

Question 8: Extension of the Financial Services and Financial Institutions (GST/HST) Regulations to TFSAs, RESPs and RDSPs
(Finance Only)

Subsection 3.1(2), paragraph (c) of the Financial Services and Financial Institutions (GST/HST) Regulations provides an exemption for arranging for the issuance, renewal, variation, or transfer of ownership of a financial instrument (e.g. brokerage commissions) provided to trusts governed by self-directed registered retirement savings plans ("RRSPs") and registered retirement income funds ("RRIFs"). This paragraph does not apply to other registered products, such as tax-free savings accounts ("TFSAs"), registered education savings plans ("RESPs"), or registered disability savings plans ("RDSPs"), some of which were introduced after the regulations were enacted.

A. Would Finance consider expanding subsection 3.1(2)(c) of the regulations to include trusts governed by self-directed TFSAs, RESPs, and RDSPs?

B. Could Finance discuss the reason for limiting the current section to self-directed RRSPs and RRIFs?

Question 9: Impact of Group Changes to the Qualifying Group Nil Consideration Elections
(CRA Only)

Legal Background

Under Subsection 156(4)(b) of the ETA, members of qualifying groups must file the RC4616 "Election or Revocation of an Election for Closely Related Corporations and/or Canadian Partnerships to Treat Certain Taxable Supplies as Having Been Made for Nil Consideration for GST/HST Purposes" with CRA. Parties to an election entered after December 31, 2014 must file the RC4616 by the earliest day on which the electing members must file a GST/HST return for the reporting period in which the effective date of the election occurs. Parties to an existing election in effect before January 1, 2015 must file the RC4616 before January 1, 2016.

Hypothetical

Company A, Company B, and Company C are parties to an existing election on December 31, 2014. Company D becomes a qualifying member and a party to an

election with Companies A, B, and C with an effective date of September 15, 2015. Companies A, B, C, and D are all monthly GST/HST filers. An election covering Companies A, B, C, and D is filed before October 31, 2015.

Are Companies A, B, and C still required to file the RC4616 to cover their pre-existing election for the period of January 1, 2015 to September 15, 2015?

Question 10: Documentation to Support Input Tax Credits
(CRA Only)

Part I: Amalgamations

Despite our best efforts to ensure compliance, there are often significant challenges to have invoices issued by suppliers reflect the name of a new amalgamated corporation in the months immediately following an amalgamation. It is not commercially feasible or practical for a new amalgamated corporation to refuse to pay suppliers because the supplier's invoice identifies the predecessor corporation's name rather than the new amalgamated corporation's name. Similar challenges arise when a wholly-owned subsidiary is wound up and dissolved into its parent corporation and the business of the subsidiary is continued by the parent, as suppliers may continue to issue invoices in the name of the dissolved subsidiary.

If the predecessor corporation's name is identified on the supplier's invoice during the period immediately following an amalgamation, would GST/HST Compliance Programs be willing to accept alternative documentation regarding the customer's identity? For example, could CRA accept documentation from the supplier acknowledging the customer is the new amalgamated or parent corporation, as well as an acknowledgement from the new amalgamated or parent corporation that the predecessor corporation will not claim an input tax credit ("ITC") for that particular supply?

Part II: Input Tax Credits of "Dissolved" Partnerships

Corporation A owns 100% of the shares of Corporation B and Corporation C. Corporations B and C formed a partnership in which they own 99.9% and 0.1% of interest in the partnership, respectively. All activities of the partnership are commercial in nature. Corporation C sells its interest in the partnership to Corporation B. The assets of Corporation B are then wound up into Corporation A.

A. Please confirm Subsection 272.1(6) of the ETA will allow the GST/HST account of the partnership to remain open so the partnership can to continue to claim the ITCs that arose during the period the partnership existed.

B. Please confirm Subsection 272.1(6) and/or paragraph 272(a) will allow Corporation A to claim ITCs for the GST/HST addressed to the partnership after the partnerships ceases to exist.

C. Can Corporation A claim ITCs with respect to Division III tax paid by or addressed to the partnership upon the importation of product into Canada after the partnership interests were transferred to Corporation B and Corporation B wound up into Corporation A?

D. Does the response to C change if the imported product belongs to an unrelated, non-resident person, the product was imported for the partnership to provide a service to the product, and the product was subsequently exported out of Canada?

Part III: Proposal for Further ITC Discussions

TEI would like to expand discussions regarding the above topics to address the challenge that taxpayers face to ensure suppliers place the proper name of the customer on the bill to section of their invoices. Parent corporations often choose company names for their group with derivatives of the parent's name and suppliers often struggle when referencing the precise name on their invoices. TEI would like to share the experience of its members in this area and determine if there is an opportunity for an administrative approach that would meet the Compliance Program's validation requirements while permitting the businesses to operate in an efficient manner.

Question 11: Bad Debts
(CRA Only)

Section 231 of the ETA allows suppliers to take deductions against net tax for tax associated with bad debts. Section 272 of the ETA (amalgamations) allows new amalgamated corporations to claim bad debts of their predecessor corporations.

There does not appear to be equivalent treatment for the supply of a business under Section 167 of the ETA whereby the recipient (the purchaser of the business) can claim bad debts of the supplier even though the supplier sold its accounts receivable to the recipient. As a result, the supplier would be required to claim the bad debts after it ceased commercial activity, having sold its business.

Similarly, former partners cannot claim bad debts after a partnership is dissolved and wound up pursuant to Subsection 272.1. Dissolved partnerships continue to exist under Subsection 272.1(6) until the partnership's GST/HST registration is cancelled. This result could require a dissolved partnership to remain registered for a significant period to

claim against its bad debts, even though those bad debts would be accounted for by the former partner into which the partnership was dissolved. This also leaves the dissolved partnership at the mercy of CRA when claiming such ITC for bad debts as CRA may use its discretion to deregister the dissolved partnership before all ITCs relating to bad debts are claimed.

A. Would Finance consider amending Section 231 (or Sections 167 and 272.1) to allow the recipient (in the case the sale of all of a business) or the former partners (in the case of the dissolution of a partnership) to claim the bad debt adjustment?

B. Please comment on CRA's administrative position regarding a "predecessor" (supplier of the business or dissolved partnership) maintaining its registration and filing returns solely to claim the bad debt adjustment. In what situations might CRA exercise its discretion to cancel a "predecessor's" registration before it was able to claim all its bad debts?

Question 12: E-Commerce Sales by Foreign-Based Vendors
(Finance Only)

Please comment on the status of the consultations announced in the 2014 Federal Budget regarding the effective collection of sales tax on e-commerce sales by foreign-based vendors to Canadian residents. Will Finance recommend amending the ETA to require foreign-based vendors to register for and collect GST/HST on e-commerce supplies to Canadian residents?

Question 13: Barters of Property
(Finance Only)

Subsection 153(3) of the ETA deems the value of consideration to be nil on barters of property if (1) the consideration for a supply of property of a particular class or kind is for property of that class or kind, (2) the supplier and recipient are registrants, and (3) the property is acquired as inventory for use exclusively in commercial activities.

Would Finance consider broadening Subsection 153(3) to barters of any property or services between registrants if such property or services will be used exclusively in commercial activities?

Question 14: Offset of Refunds for Partnership Divisions
(CRA and Finance)

Under Subsection 228(7) of the ETA, closely related corporations can offset refunds or rebates of GST/HST against remittable amounts of an elected group. The file of the

coordinator is not transferred to Collections if one of the corporations within the group has a refund and a desk audit is elected by CRA for any of the members of an elected group.

The administrative policy of CRA is also to offset any GST/HST refunds of partnership divisions against liabilities under the same Business Number. However, when a partnership with divisions is chosen for a desk audit, the shortfall resulting from the refund under audit is automatically transferred to Collections.

For example, ABC is a partnership with three divisions. Division 1 has a net tax payable of $20 million, Division 2 has net tax payable of $2 million, and Division 3 has a tax refund of $6 million. ABC files a net return of $16 million. Division 3 is chosen for a desk audit. A liability of $6 million is immediately sent to Collections and becomes payable under the collection rules for ABC, even though CRA has an administrative policy allowing registrants with more than one division to offset net tax payable with refund claims from different divisions of the same registrant.

This policy creates a cash flow issue for partnerships and puts partnerships in a constant collection position even though similar treatment is rightly not triggered under a Section 228(7) election for closely related corporations. Further, this collection issue is triggered by CRA undertaking a desk audit, not by the registrant making late payments.

Would CRA or Finance consider recommending taxpayers with various divisions, such as a partnership, not be penalized when a desk audit is in progress for refunds until the audit is completed and the refund claims are rejected? Alternatively, could Section 228(7) be amended to include partnerships?

Question 15: Audit Practice Going Against CRA's ITC Entitlement Administrative Position
(Finance and CRA)

Companies A and B are GST registrants, engage exclusively in commercial activities, members of a closely related group, and have elected under Section 156 of the ETA to have transactions between them to be for nil consideration. They have also made a corresponding Section 334 election under the Quebec Sales Tax Act ("QSTA").

Company A enters into a contract to procure goods and services from suppliers. The invoices are issued to and paid by Company A. Company A is legally required to pay for the invoices under the contract and is the recipient under the ETA and QSTA.

However, certain goods and services are consumed by Company B. These purchases are recorded in Company B's general ledger ("GL"). Company A records and claims input

tax refunds ("ITRs") for the Quebec sales tax paid on invoices where the expenses are recorded by Company B.

ARQ has taken the position during QST audits "[t]he ITR'S claimed on certain invoices issued to [Company A] should be claimed by [Company B], even though they are addressed to [Company A]. The fact is that [Company B] is the person who acquired the goods or the services in the course of is commercial activity."

ARQ indicated similar policy with respect to allowing ITRs to an entity other than the one that received the invoice at the symposium held by Association de Planification Fiscale et Financiere ("APFF") in May 2014.

Please clarify whether Finance and CRA hold a similar position in light of the harmonization between GST and QST. Please note TEI members have encountered a similar position from CRA in the course of GST/HST audits.

Question 16: Fair Market Value and Valuation Methods
(CRA Only)

Builders must estimate the fair market value ("FMV") of real property on which they self-assess GST/HST for purposes of Section 191(1) of the ETA. The publication, *Policy Statement P-165R – Fair Market Value for Purposes of Part IX of the Excise Tax Act*, states FMV:

> Represents the highest price, expressed in terms of money or money's worth, obtainable in an open and unrestricted market between knowledgeable, informed and prudent parties acting at arm's length, neither party being under any compulsion to transact.

CRA further indicates there are three general methods to FMV valuation: the cost method, the direct comparison method, and the discounted cash flow method. The Courts have held when a new building is constructed, the best method for calculating FMV is the cost method (Beaudet et al vs. the Queen).

Practically speaking, appraisals are not always available when self-assessment is required. Cost is generally available, but certain costs (e.g., land) may not reflect market value given the lag in time between acquisition and construction.

Please comment on the use of cost as a FMV valuation method and when other methods may be more appropriate, considering factors such as the significant time between construction completion date and self-assessment date, market volatility, etc.

Question 17: Rebates and Net Tax Remittances
(CRA Only)

Subsection 228(6) of the ETA allows net tax remittable to be offset by refunds and rebates to which a registrant is entitled. The refund or rebate must be filed with the GST/HST return in which the offset is requested.

Many registrants must file electronically. However, only certain rebates can be filed electronically. This can create significant cash flow and timing issues for builders and landlords unable to offset their net tax remittable with their rebates.

A. When will other rebates be available to file electronically?

B. Are there other options available to registrants desiring to offset their net tax remittable with the rebates not available for online filing?

Question 18: Remote Work Location Election
(CRA Only)

When a work site is less than 80 Km from an established community, is it acceptable to file the election for Subsection 191(7) of the ETA if only one worker at the site qualifies for the remote work location exemption in subparagraph 6(6)(a)(ii) of the Income Tax Act ("ITA")?

Legal Background

Subsection 191(7) of the ETA includes a deeming provision allowing registrants to construct worker accommodations for staff and contractors at a remote work location without triggering a self-assessment under Subsection 191(3) of the ETA.

Subsection 191(7) does not reference the remote work location provision contained in Subparagraph 6(6)(a)(ii) of the ITA. However, GST/HST Policy P-090 Remote Work Site makes it clear CRA takes the position the income tax interpretation for a remote work location must also be used for the Subsection 191(7).

A reasonable conclusion would be the policy in P-090 applies to a particular remote work location. Stated differently, if the work location is considered "remote" under the income tax interpretation, the deeming provisions in Subsection 191(7) are available if the registrant makes the election for the work location.

On June 24, 2015, CRA Income Tax Ruling's directorate issued an interpretation (file no. 2015-057025) stating a work site located within 80 Km of an established community can

only be determined to be a remote work location "on a worker-by-worker basis." This interpretation also states the income tax exemption for a remote work location "is a point-in-time determination as facts could change from year to year or month to month. Therefore, a worker should monitor the available housing on an annual basis."

Under this income tax interpretation, a registrant may use the election in Subsection 191(7) for a work location less than 80 Km from an established community if the location qualifies as a remote work location for any one worker. Therefore, it follows a registrant must review the status of each worker on an annual basis to confirm the site continues to qualify as a remote work location so it can rely on the deeming provisions in Subsection 191(7).

Hypothetical

When the ability to use the remote work location exemption is determined on a worker-by-worker basis, the following situation will occur.

Should a mega-project be located within 80 Km from an established community and the established community has little or no available residential accommodations, the registrant will not be able to use the election in Subsection 191(7) if there is some accommodation available when a worker first occupies a unit of worker accommodation at the mega-project site. The registrant in this case will be a builder and be required to self-assess GST under Subsection 191(3) of the ETA. For the life of the project, the registrant will be required to determine which portion of the worker accommodation is used for commercial or exempt activities and deal with the change-of-use and basic tax content rules accordingly.

The inability to use the election in Subsection 191(7) results in unrecoverable GST being incurred by the registrant on temporary worker accommodations constructed and used for the mega-project and then removed when the project is completed.

Question 19: Joint Venture Election
(Finance Only)

Several years ago, the Federal Government announced its intention to expand the list of prescribed activities qualifing for the joint venture election pursuant to Section 273 of the ETA and the current GST regulations. The purpose of this expansion was to simplify the compliance and tax burdens of participants entering into joint ventures to carry out commercial activities.

In 2014, the Federal Government announced its intention to consult with stakeholders on measures to allow more joint venture participants to make the joint venture election in its Economic Action Plan.

The Federal Government confirmed its intent to proceed with previously announced tax and related measures relating to the GST/HST joint venture election in its Budget 2015.

Please provide an update regarding when these measures will be announced and implemented.

Question 20: Definition of "Income" for Reporting Institutions
(CRA Only)

Section 273.2 of the ETA requires "reporting institutions" to file an annual information return (Form GST 111). Subsection 273.2(2) states persons are "reporting institutions" if: (a) the person is a financial institution at any time in the fiscal year, (b) the person is a GST/HST registrant at any time in the fiscal year, and (c) "the total of all amounts, each of which is an amount included in computing, for the purposes of the [ITA], the person's income…for the last taxation year of the person that ends in the fiscal year, exceeds the amount determined by the formula $1 million x A/365 where A is the number of days in the taxation year."

TEI's members have not been able to obtain definitive written or oral guidance from CRA regarding the meaning of "the total of all amounts, each of which is an amount included in computing, for the purposes of the [ITA], the person's income." Rather, answers obtained from CRA in response to telephone inquiries on this issue varied from accounting profit, net income of line 300 of the T2 return, taxable income of line 360 of the T2 return, the person's gross sales based on their financial statements, and adjusted accounting profit.

Subsection 273.2(2)(c) references "an amount included in computing, for the purposes of the [ITA], the person's income." Therefore, a reasonable conclusion would be to use the ITA's calculation of income or profit for tax purposes. This computation is set forth under Division B of Part I of the ITA and corresponds to the net income (or loss) for income tax purposes (*i.e.*, line 300 of the T2 Corporation Income Tax Return or line 503 of the T5013 Statement of Partnership Income). Subsection 9(1) of the ITA provides "a taxpayer's income for a taxation year from a business or property is the taxpayer's profit from that business or property for the year."

A less reasonable interpretation of Subsection 273.2(2)(c) is meaning sales figures, as Subsection 273.2(2)(c) references the ITA and the ITA does not define sales figures. Had Subsection 273.2(2)(c) intended to reference sales figures, it would have be more

reasonable to refer to "the total of all consideration that became due" as Subsection 149(1)(b) of the ETA did when defining "financial revenue."

Please address what constitutes "the total of all amounts, each of which is an amount included in computing, for the purposes of the *Income Tax Act*, the person's income" under Subsection 273.2(2)(c).

Question 21: Sharing of CRA Submissions and Responses
(CRA Only)

TEI, as well as other professional organizations such as the Chartered Professional Accountants ("CPA") and Canadian Bar Association ("CBA"), provide CRA with submissions and requests for clarification from time to time. Has CRA considered how CRA could share or diffuse such information amongst practitioners and industry registrants? For example, could CRA make such responses available to the public by posting the information in one centralized databank?

Question 22: Rules for Recovery of GST/HST on Out-of-Pocket Costs
(CRA Only)

CRA sought input and TEI provided feedback for CRA to develop a publication regarding the rules for recovery of GST/HST on out-of-pocket costs. Please provide an update regarding the status of this publication.

Question 23: My Business Account Update
(CRA Only)

CRA indicated in prior discussions it would update and refine the My Business Account Service, taking into account feedback received from TEI members. Please provide an update regarding this process.

Question 24: CRA's Audit Centralized Intake Centre
(CRA Only)

CRA adopted a centralized intake centre to facilitate the allocation of audits amongst available staff nationwide and manage its workload. An unintended result of this workload allocation for larger organizations with related groups is the scheduling of multiple audits within a very short time frame. This problem arises because a number of different auditors from various tax services offices ("TSOs") may contact large organizations for an audit of one or more entities within the related group within a brief timeframe (as short as 9 months).

For example, one TEI member's company was contacted by five different auditors located in four different TSOs, which created a total of 11 new audits. Moreover, two separate auditors chose to audit the same corporation but for different audit periods.

Would CRA consider reviewing its workload allocation process when dealing with large organizations with related groups, including assigning only one or two auditors to the group for efficiency and offering the possibility of having one large case manager for the group?

CONCLUSION

TEI appreciates this opportunity to present its comments and questions for discussion. We look forward to meeting and discussing our views with you on November 17-18, 2015.

Respectfully submitted,

Tax Executives Institute, Inc.

Lynn Moen
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