TAX EXECUTIVES INSTITUTE, INC.

LIAISON MEETING QUESTIONS

Submitted to

CANADA REVENUE AGENCY

and

THE DEPARTMENT OF FINANCE

NOVEMBER 15-16, 2016

TECHNICAL QUESTIONS

1. Cloud Storage of Books and Records (CRA and Finance)

Subsection 286(1) of the *Excise Tax Act* (ETA) requires registrants to keep books and records in Canada or at such other place as the Minister of Finance (Minister) may allow. Canada Revenue Agency (CRA) takes the position in Paragraph 12 of *GST/HST Memoranda Series 15.2 – Computerized Records* that records kept outside Canada and accessed electronically from within Canada are not considered to be "in Canada" for purposes of subsection 286(1).

Subsection 230(1) of the *Income Tax Act* (ITA) provides a similar requirement to keep books and records in Canada or seek the Minister's permission. TEI's Canadian Income Tax Committee raised this issue with CRA in November 2014, at which time CRA reiterated its position that taxpayers must seek the Minister's permission to store books and records outside Canada.

Significant technological advancements have been made since 2005, when CRA released *GST/HST Memoranda Series 15.2*. Cloud computing has become increasingly common and companies, both large and small, are outsourcing their computing infrastructure to store their expanding volumes of data. Section 286 of the ETA and the CRA's

administrative position have not evolved, thus requiring registrants to seek permission from the Minister to keep their books and records outside Canada if their cloud computing provider stores their records on servers located outside Canada.

CRA's position is difficult to comply with in light of these technological developments. Cloud computing agreements do not normally address the location of servers. Thus, even registrants that outsource their computing infrastructure to Canadian companies are at risk that the provider may actually store the registrant's data on a server outside Canada without the registrant's knowledge. CRA's position thus requires most registrants that outsource their computing infrastructure to seek the Minister's permission.

In *eBay Canada Ltd. v. Canada, 2008 FCA 348*, the Federal Court of Appeal addressed whether electronic information stored on servers outside Canada was located in Canada for purposes of determining whether CRA had the ability to obtain foreign-based information under the ITA. The Court held that such information was just as easily accessible as paper documents stored in the taxpayer's Canadian offices. The Court's decision highlights that the initial rationale for keeping books and records in Canada is no longer relevant in light of taxpayers' and CRA's ability to easily access to documents stored on servers outside Canada.

Question to Finance:

> *Would the Department of Finance (Finance) consider amending subsection 286(1) to clarify that data stored on servers outside Canada but accessible within Canada is considered to be "in Canada" for the purposes of section 286, given the trend of companies to move their data off their own servers to third party cloud servers, the inability of registrants to reliably keep track of the location of the servers used by third party cloud providers, and the principles of the* eBay *decision?*

Question to CRA:

> *Would CRA consider revising its administrative position so that records easily accessible by a computer within Canada are considered kept "in Canada" for purposes of subsection 286(1)?*

2. Electronic Supporting Documentation (Finance and CRA)

The use of physical documentation is decreasing and the use of recipient-generated documentation (e.g., Evaluated Receipt Settlement) is increasing with the expanded use of online software and storage (e.g., cloud computing). Information is frequently exchanged electronically and, in certain cases, suppliers no longer issue invoices but instead simply accept recipient purchase orders and goods receipts.

The *Input Tax Credit (GST/HST) Regulations* (ITC Regulations) currently list the following as acceptable documentation to support an input tax credit (ITC) claim:

- an invoice;
- a receipt;
- a credit-card receipt;
- a debit note;
- a book or ledger of account;
- a written contract or agreement;
- any record contained in a computerized or electronic retrieval or data storage system; and
- any other document validly issued or signed by a registrant in respect of a supply made by the registrant in respect of which there is tax paid or payable.

It is our members' understanding that the information necessary to support an ITC is not required to be included in a single document and that electronic documentation and recipient-generated documentation will suffice. However, several of our members have encountered auditors who take a contrary position.

Questions for CRA:

A. *Please confirm that the necessary information to support an ITC is not required to be included in a single document (e.g., a document identified as an invoice or similar).*

B. *Please confirm that electronic documentation and recipient-generated documentation qualifies as acceptable forms of ITC support.*

Questions for Finance:

Would Finance consider amending the ITC Regulations to:

C. *Clarify that the necessary information to support an ITC is not required to be included in a single document (e.g., a document identified as an invoice or similar); and*

D. *Clarify that electronic documentation and recipient-generated documentation qualifies as acceptable forms of ITC support?*

3. Foreign-Based E-Commerce Vendors (Finance Only)

On February 11, 2014, the Federal Government, through the Federal Budget, invited input from stakeholders on what actions Canada should take to ensure the effective collection of sales tax on e-commerce sales to residents of Canada by foreign-based vendors. TEI was pleased to participate in this effort by providing the comments contained in its letter dated July 27, 2014 (attached).

Question:

Please comment on the status of the consultations announced in the 2014 Federal Budget regarding the collection of sales tax on e-commerce sales by foreign-based vendors to Canadian residents.

4. Technical Information Bulletin B-090: GST/HST and Electronic Commerce (CRA Only)

Technical Information Bulletin B-090: GST/HST and Electronic Commerce was issued in 2002 and explains CRA's interpretation of key provisions of the ETA relevant to electronic commerce. It also outlines how CRA's administrative policies apply to transactions made by electronic means.

Question:

When will CRA update the 2002 GST/HST Technical Information Bulletin B-090, in light of a growing digital economy and the difficult and complex issues that arise in the application of sales tax rules?

5. Operating and Trading Names of Registrants (CRA Only)

CRA allows a business to register an operating or trade name on a request for a business number using Form RC1 – "Request for a Business Number." Some

registrants may have completed the RC1 with only the registrant's legal name and subsequently wish to add an operating/trade name to its file. CRA provides some general information on its website (http://www.cra-arc.gc.ca/tx/bsnss/tpcs/lf-vnts/chngprtngnm-eng.html) regarding how businesses may change their operating name in CRA's records.

The *Input Tax Credit Information (GST/HST) Regulations* provide that the "name under which the [supplier]…does business" is an acceptable alternative to the name of the supplier when satisfying documentary requirements. Additional information on CRA's position on operating/trade names would be beneficial for registrants.

Questions:

A. *A registrant may do business under a number of different operating/trade names for different aspects of its business, all under the same legal entity. Please confirm whether a registrant can register multiple operating/trade names with CRA. Further, is there a limit to the number of trade names a registrant may register with CRA?*

B. *CRA's website does not specify what, if any, business documentation is required to substantiate that a registrant is doing business under a particular operating/trade name. Further, CRA's website implies no business documentation is necessary to make changes to an operating/trade name. Please confirm that a registrant needs only to request that an operating/trade name be changed or added to its file, and that no further business documentation is required.*

C. *The GST/HST Registry is used by registrants to confirm the validity of GST/HST registration numbers for suppliers when meeting the documentary requirements for claiming ITCs. Please confirm that all of the operating/trade names provided by a registrant are included in the GST/HST Registry so that registrants may confirm the validity of a GST/HST registration number by using the legal name or any of the operating/trade names of a supplier.*

6. Place of Supply Rules – Services for Tangible Personal Property (CRA Only)

Paragraph 142(1)(g) of the ETA provides that supplies of services are deemed to be in Canada if the services are performed in whole or in part in Canada.

Section 13(1) of the *New Harmonized Value-Added Tax System Regulations* (part 1, division 3) provides a general rule for the place of supply of services and specifies that if a

supplier of services only obtains one address of the recipient, the services are made in the province within which the address is located.

Sections 15 and 16 of those regulations provide that services performed in relation to tangible personal property (TPP) are made in the province in which the TPP is located.

Section 29 of those regulations provides that if the supplier receives particular TPP for the purpose of supplying the services of repairing, maintaining, cleaning, adjusting, or altering such TPP, the services will be deemed to take place in the province to which the supplier delivers the TPP after the services are complete.

Hypothetical:

A registrant provides maintenance services to TPP for a flat fee. Substantially all of the services are performed outside Canada but a small portion of the services are performed in Ontario. Upon completion of the maintenance services, the TPP is delivered to Quebec.

Questions:

A. *Does the place of supply occur in Ontario, where the services are performed, or in Quebec, where the TPP is delivered? Why?*

B. *Does the response in (A) above change if the consideration for the services is calculated on a per unit basis rather than for a flat fee?*

Draft GST/HST Technical Information Bulletin B-103 explains place of supply rules to determine whether a supply is made in a harmonized province. Examples 105 and 111 relate to furniture and appliance repair services and illustrate the application of Section 15 of Division 3 of Part 1 of the Regulations concerning TPP.

C. *Why would the services identified in Examples 105 and 111 not be subject to section 29 of Part 1 of the Regulations relating specifically to services of repairing, maintaining, cleaning, adjusting or altering TPP delivered into a province?*

D. *Please indicate if the fact that repairs are undertaken at the locations where the TPP is situated is determinative?*

Example 106 of *Draft GST/HST Technical Information Bulletin B-103* concerns anodizing services and illustrates the application of Section 15 of Division 3 of Part 1 of the

Regulations concerning TPP remaining in the same province while the service is performed.

E. *Why would the services identified in Example 106 not be subject to section 29 of Part 1 of the Regulations, which relates to the services of repairing, maintaining, cleaning, adjusting or altering TPP delivered into a province?*

F. *When will the GST/HST Technical Information Bulletin B-103 – "Place of supply rules for determining whether a supply is made in a province" be finalized?*

7. Place of Supply - Services Related to Tangible Personal Property for a Flat Fee (CRA Only)

Hypothetical:

Client's sole business address is located in Sarnia, Ontario. Client pays third-party logistics supplier ("3PL") a flat monthly fee to pick, pack and ship, warehouse, and distribute tangible goods located in Edmonton, Alberta.

Questions:

A. *Does the place of supply occur in Ontario, where the client is located, or in Alberta, where the TPP is located?*

B. *Does the response in (A) above change if the consideration for the services is calculated on each component of the service (a fee for pick, pack, and ship; a fee for warehousing; a fee for distribution/transportation) rather than as a flat monthly fee?*

8. Place of Supply - Supply Chain Solution Services (CRA Only)

Hypothetical

A third-party supply chain management provider ("3PSCM") is contracted to design and implement a supply chain solution for goods located in New Brunswick for a client whose sole business address is in Ontario. The same contract also establishes that the 3PSCM will provide pick, pack and ship, warehousing and distribution services as required by the supply chain solution and that all such activities will occur entirely in New Brunswick. The contract does not establish a separate fee for the design and

implementation of the supply chain solution; rather, that cost has been contemplated when the parties negotiated the per-unit fee or the entire suite of the supply chain services.

Questions:

A. *Does the place of supply occur in Ontario, where the client is located, or in New Brunswick, where the TPP is located? Why?*

B. *Does the response in (A) above change if a separate fee was established for the design and implementation of the supply chain solution?*

9. Place of Supply – Minimum Billings for Supplies of Services Related to TPP (CRA Only)

Hypothetical

A supplier provides a service for a client located in British Columbia on TPP located in Ontario. The agreement between the supplier and the client provides that the consideration for the services will be calculated on a per unit basis, with a guaranteed minimum billing per month if the volume of services is less than projected.

For the month of September 2016, the volume of services was more than projected; therefore, the supplier charges the client on a per unit basis.

For the month of October 2016, the volume of the services rendered did not reach the minimum guaranteed monthly revenue; therefore, the supplier charges the client the minimum guarantee fee.

For the month of November 2016, no services were required or rendered; therefore, the supplier charges the client the minimum guarantee fee.

Questions:

A. *For the month of September, is the place of supply in BC, where the client is located, or in Ontario, where there TPP is located? Why?*

B. *For the month of October, is the place of supply in BC, where the client is located, or in Ontario, where there TPP is located? Why?*

C. *For the month of November is the place of supply in BC, where the client is located, or in Ontario, where there TPP is located? Why?*

10. Compensation for Out-of-Stock Occurrences (CRA Only)

Hypothetical:

Manufacturer A enters into an agreement (Agreement) with Wholesaler B for the sale of taxable goods, at the standard price rates, to be delivered in Canada. Manufacturer A and Wholesaler B are resident in Canada and registered for GST/HST. The Agreement provides that if Manufacturer A cannot fill the purchase orders submitted by Wholesaler B, Wholesaler B will be permitted to acquire comparable goods from another manufacturer and will be entitled to receive compensation from Manufacturer A for this out-of-stock occurrence.

Questions:

A. *Is Wholesaler B required to charge GST/HST on the out-of-stock compensation received from Manufacturer A?*

B. *Does the answer in (A) above change if the Agreement specifies that the out-of-stock compensation is meant to reimburse Wholesaler B for the administrative costs that will be incurred by Wholesaler B if Manufacturer A cannot fill the purchase order?*

C. *Does the answer in (A) above change if supply of the goods, by Manufacturer A, are zero-rated supplies?*

D. *Does the answer in (A) above change if the Agreement establishes that Manufacturer A's payment to Wholesaler B is a penalty?*

11. Compensation for Late Delivery (CRA Only)

Hypothetical:

Manufacturer C enters into an agreement (Agreement) with Wholesaler D for the sale of taxable goods, at the standard price rates, to be delivered in Canada. Manufacturer C and Wholesaler D are resident in Canada and registered for GST/HST. The Agreement provides that if Manufacturer C cannot deliver the goods on time, Wholesaler D will be entitled to receive compensation from Manufacturer C for the late delivery.

Questions:

A. *Is Wholesaler D required to charge GST/HST on the late delivery compensation received from Manufacturer C?*

B. *Does the answer in (A) above change if the Agreement specifies that the compensation is meant to reimburse Wholesaler D for its costs incurred because Manufacturer C could not deliver on time?*

C. *Does the answer in (A) above change if supply of the goods by Manufacturer C are zero-rated supplies?*

D. *Does the answer in (A) above change if the Agreement establishes that Manufacturer C's payment to Wholesaler D is a penalty?*

E. *Does the answer in (A) above change if the Agreement establishes that the compensation to Wholesaler D is reduced consideration for the goods?*

12. Proposed Amendments to the Drop Shipment Rules (Finance Only)

The drop shipment rules found in section 179 of the ETA allow unregistered non-resident persons to acquire goods in Canada, or commercial services in respect of goods, on a tax-free basis if the goods are ultimately exported or are retained in Canada by a registrant. Amendments to the ETA's drop shipment rules have been proposed on a prospective basis. The proposed amendments refer to the "particular tangible personal property" and, in the case of leases, the "particular taxable supply of tangible personal property."

Question:

A. *Why were the amendments not applied retroactively so that companies that have been or will be assessed for prior periods are eligible for relief?*

TEI is concerned that the proposed rules will be interpreted to require separate drop shipment certificates for:

- Each agreement for the supply of TPP, manufacturing services, or commercial services;
- Each purchase order issued under the relevant agreement; and

- Every shipment or transfer of physical possession of the relevant TPP.

Under this potential interpretation, CRA could refuse to accept blanket drop shipment certificates and require separate certificates for each transaction or shipment of the particular property in question.

Recommendation:

TEI recommends that section 179 be amended to:

B. *Specify that a blanket certificate covering acquisitions of particular property during a specific period of time or on an ongoing basis is acceptable; or*

C. *Clarify that a single certificate given by a particular consignee to a particular registrant may cover one or more acquisitions of particular property.*

D. *Clarify whether existing drop shipment certificates need to be updated to reflect the new rules.*

13. Input Tax Credits for Services in Relation to Shares or Indebtedness of Related Corporations (Finance Only)

Section 186(1) of the ETA allows a corporation resident in Canada to claim ITCs for GST/HST paid or payable on inputs to certain services in relation to the shares or indebtedness of another related corporation. That provision does not apply to "persons" other than corporations, such as partnerships.

Hypothetical:

- Partnership ABC holds 90% of the voting shares of Canco;
- 100% of Canco's activities are commercial activities; and
- Partnership ABC incurs various consulting fees to determine if it should acquire additional shares of Canco.

Based on the current wording of section 186, Partnership ABC could not claim the ITC applicable on the consulting fees because it is not a corporation.

Recommendation:

TEI recommends that Finance expand the application of section 186 of the ETA to other "persons" so entities such as partnerships may claim ITCs for GST/HST paid or payable on inputs to certain services in relation to the shares or indebtedness of another related corporation.

14. Revenue Calculations for *De Minimis* Financial Institutions (Finance Only)

Subsection 149 of the ETA defines when a person qualifies as a "financial institution" for a particular year. Subsection 149(4) provides that interest and dividends received from related corporations are excluded for purposes of calculating a person's financial revenue for the purposes of the *de minimis* threshold contained in paragraph 149(1)b) or calculating a person's income for the test in paragraph 149(1)c). Subsection 126(2) of the ETA specifies that persons are related to each other under the ETA if they are related to each other pursuant to subsections 251(2) to 251(6) of the ITA.

Subsection 149(4) is written in such a way that interest or dividends paid by a related corporation to a partnership (including a corporate partner of a partnership) are excluded from the calculation of such partnership's financial revenue. However, subsection 149(4) does not address interest paid by a partnership to a corporation and thus such amounts must be included in the corporation's financial revenue.

Subsection 149(4) thus deems certain partnerships to be financial institutions when other corporations having the same characteristics will be excluded. Deemed financial institutions are required to file the *GST111 - Financial Institution GST/HST Annual Information Return* (GST 111). In order to comply with this requirement, partnerships that are deemed financial institutions based solely upon the non-application of subsection 149(4) must spend a tremendous amount of time and resources to prepare the GST 111.

Recommendation:

TEI recommends that subsection 149(4) of the ETA be amended to include interest paid to corporations by related partnerships, thereby excluding such amounts from the calculation of financial revenue. This would help ensure an equitable treatment among partnerships and corporations and reduce time spent on the corresponding compliance obligations (GST111).

15. Input Tax Credits for Partnerships that Continue to Exist Under Subsection 272.1(6) of the ETA (CRA Only)

Subsection 272.1(6) of the ETA deems a partnership that has ceased to exist to continue to exist for the purposes of Part IX of the ETA until the GST/HST registration of the partnership is cancelled.

Hypothetical:

Partnership A is engaged in commercial activity. Corporation B and Corporation C each hold 50% of the partnership units of Partnership A. Corporation B acquires all of Corporation C's partnership units on December 31, 2016; as a result, Partnership A ceases to exist at law.

Corporation B is not eligible to claim ITCs of Partnership A for supplies prior to January 1, 2017. Therefore, Partnership A continues to be registered for GST/HST after January 1, 2017 in order to account for tax and ITCs for periods prior to January 1, 2017.

In April 2017, Supplier D retroactively invoices Partnership A for GST/HST applicable on services provided to Partnership A during 2016.

Questions:

A. *Recipients are generally allowed to claim ITCs under subsection 225(4) of the ETA within four years (two years for a specified person) from the day on which the return for the reporting period in which the ITC arose is due. Please confirm that CRA would not seek the cancellation of Partnership A's GST/HST registration under section 242 of the ETA until such time as Partnership A requests such cancellation.*

B. *In light of the extension of time to claim an ITC provided in paragraph 225(4)(c) of the ETA and CRA's position in GST/HST Policy Statement P-116 that a supplier may meet the disclosure requirements for section 224 after the fact, please comment on whether CRA would allow Partnership A to re-register for the purpose of claiming ITCs if Supplier D had instead invoiced Partnership A in April 2019 (for supplies provided in 2016), after Partnership A had been deregistered.*

C. *If the response to (B) is that Partnership A would not be allowed to re-register, assume Corporation B paid the tax on behalf of Partnership A. Please confirm Partnership A would be allowed to claim the ITC on a non-personalized return.*

16. Rejection of GST Forms (CRA Only)

TEI members report that a number of GST forms are being rejected because CRA does not have the authorization on file for the person signing an election on such forms.

A. *Are agents processing the forms expected to contact the "Contact Person" listed on the forms if they have issues processing an election rather sending a form rejection letter to the company?*

B. *What is acceptable proof to CRA that a person executing the forms is authorized to sign an election?*

C. *Would CRA consider contacting the taxpayer prior to rejecting the above form?*

17. Supplies of Exempt Health Care Services (CRA Only)

We would like to determine if we have properly applied the guidance in CRA RITS cases 92711 and 34306 to a similar fact scenario.

Hypothetical

A private practice health clinic in Ontario provides nursing services to clients. The Ontario provincial health authority requires that the clinic has a medical doctor on call to deal with any adverse reactions that may occur as the nurses treat the patients. The medical doctor is not required to be on site. The medical doctor charges the clinic a flat fee for the block time or "shift" the doctor was on call. If the doctor is contacted while on-call to provide guidance on adverse reactions, the doctor bills the clinic an additional amount, beyond the flat fee for the shift, for his or her intervention.

Our review of the ETA and CRA RITS cases 92711 and 34606 suggests that the supply of the on-call coverage to the clinic, where the doctor was not contacted during the shift, does not qualify as an exempt supply of a health care service; however, if the doctor was contacted while on-call, the supply would qualify as an exempt supply of a health care services.

Questions:

A. *Please confirm the supply of the on-call coverage to the clinic, where the doctor was not contacted during the shift, billed as a flat fee, does not qualify as an exempt supply of a health care service.*

B. *Please confirm the on-call coverage to the clinic, where the doctor was contacted during the shift, billed as a flat fee, qualifies as an exempt supply of a health care service.*

C. *Please confirm the additional charge for the doctor's intervention qualifies as an exempt supply of a health care service.*

18. Transitional Rules for Provincial Rate Increases (Finance Only)

A. *Please confirm whether the transitional rules relating to the recent New Brunswick, Newfoundland and Labrador, and Prince Edward Island rate increases are the final version of such rules and will be applied to future changes?*

B. *Please confirm that on allowances paid to employees, the administrative formula for the deemed HST paid in New Brunswick and Newfoundland and Labrador, has increased from 12/112 to 14/114 on eligible expenses effective July 1, 2016.*

C. *Please confirm that the rate mentioned above has increased from 13/113 to 14/114 on eligible expenses effective October 1, 2016, when Prince Edward Island increased its HST to 15%.*

19. Update Regarding 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.

20. Input Tax Credits for Property and Services for Use in Relation to Shares of Capital Stock or Indebtedness of Related Corporations (CRA Only)

Section 186 of the ETA provides that where a corporation resident in Canada acquires property or services for use "in relation to" shares of the capital stock or indebtedness of a corporation related to the parent, the parent will be deemed to have acquired such property or services for use in the parent's commercial activities for the purposes of determining the parent's ITC.

In Perfection Dairy [2008] G.S.T.C. 124(TCC) and Stantec Inc. [2009] G.S.T.C. 143(FCA), the courts took a broader view of the phrase "in relation to" and allowed the parents'

ITCs. The Stantec Decision provides that section 186(1) "is not intended to limit or otherwise restrict the ability of a holding company to claim input tax credits where the subsidiary would clearly be entitled to claim them."

Similarly, the court in Miedzi Copper [2015] G.S.T.C. 15, interpreted the phrase "in relation to" broadly and allowed ITCs relating to services associated with shares or indebtedness, including legal fees for corporate reporting and filing services, fees for advice relating to HST issue in this appeal, fees for advice concerning a shareholder agreement, fees relating to a stock option plan and related amendments to articles, accounting fees incurred for the preparation of Canadian tax returns, fees in connection with the audit of financial statements, miscellaneous cell phone, parking, meal & courier charges, and fees for web domain name registration.

CRA nonetheless maintains a more restrictive interpretation of section 186 and has required a direct linkage between (i) the taxable inputs acquired or imported, and (ii) the shares or indebtedness of a related corporation in order to claim an ITCs.

Question:

> *Will CRA undertake a review of its current administrative policy and align with a broader application of "in relation to" in light of these three court cases interpreting section 186 more broadly?*

21. Proposed National Carbon Tax Policy (Finance Only)

The Liberal government recently reinforced its plan to implement a Federal Carbon strategy of $10 per tonne beginning in 2018, reaching to $50 per tonne by 2022. Understandably, many of the details have yet to be released. However, many of TEI's members reside in provinces with carbon pricing regimes already in place or soon to be in place, and thus understand the complexities in putting such regimes into place.

> *Please provide an update on the recent announcement for a national policy on carbon pricing. Specifically, please provide insights on how the Federal Government might impose a carbon fee in provinces that do not adopt their own policy, including:*
>
> A. *What is the national policy expected to look like?*
>
> B. *What is the timeline for releasing legislation and regulations related to the policy?*

C. *Has Finance, or any other Federal Department or Agency, attempted to measure the fiscal impact of the proposed national policy to affected businesses and industry?*

22. Update Regarding Changes to Joint Venture Election (Finance Only)

In 2014, the Federal Government announced its intention to consult with stakeholders on measures allowing 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.

23. Approval and Review Process for Financial Institution Input Tax Credit Methodology (CRA and Finance)

In the early 2000s, Finance questioned the allocation methods used by financial institutions to determine their entitlement to ITCs. Finance thereafter amended the ETA to provide greater clarity and direction to financial institutions. The amendments provided more detailed ITC allocation rules for financial institutions, particularly in the case of banks, insurers, and securities dealers, and required such institutions to use a prescribed percentage or obtain pre-approval from CRA to use their own ITC allocation method.

It takes more than six months, on average, for CRA to issue a letter approving an ITC allocation methodology. The volume and the extent of administrative requests is onerous, in part, because financial institutions must request approval even if they have not changed their method from the prior year.

For example, each year, financial institutions must provide a complete worked example of the most recent return. Even if the methodology remains the same, CRA must audit and substantiate the numbers if the ITC rates have changed from the prior year. Each ITC rate has underlying drivers so it is unclear why numbers must be audited if the drivers remain the same.

TEI members have also observed an increase in the amount of detail requested. The approval process appears very similar to the audit of a return rather than a review of a methodology. For example, CRA sometimes requests copies of invoices to demonstrate the type of expenses incurred and copies of agreements to determine nature of supplies.

It is unclear why such information is necessary for the purposes of approving a proposed methodology.

Questions for Finance:

A. *Please explain the purpose of the ITC methodology approval process, including the reason the process must be completed on an annual basis.*

B. *If CRA has approved a methodology and no changes have been made to the methodology or the inputs, please address whether Finance would consider waiving the annual approval process.*

C. *Please address whether Finance would consider establishing a dispute resolution process to address instances where CRA and a financial institution have material concerns or disagreements relating to a particular proposed methodology.*

Questions for CRA:

D. *Form RC7216, "Application, Renewal, or Revocation of the Authorization for a Qualifying Institution that is a [Selected Listed Financial Institution] to Use Particular Input Tax Credit Allocation Methods" has boxes allowing financial institutions to certify that they are not proposing changes to their current method. Financial institutions are nonetheless subjected to an "audit" of their methodology even if they certify that no changes are proposed. Please explain the rationale behind the exhaustive review process involved in approving a methodology.*

Recommendations:

E. *TEI recommends that the methodology review and approval process be streamlined, with a focus on the overarching principles and methodology rather than delving into underlying return details. To this end, CRA could require financial institutions to provide a written description of inputs and the proposed methodology. This would enable CRA to approve the methodology without necessitating an in-depth understanding of a particular financial institution's worksheet calculations.*

F. *TEI recommends that CRA provide more detail in letters disapproving a proposed methodology, particularly if the methodology was approved in prior years. Such information would aid financial institutions in understanding the basis for the disapproval and assist them in amending the methodology if required.*

24. Input Tax Credits for Predecessor and Successor Companies (CRA Only)

Predecessor Company, wholly engaged in commercial activities, sells all of its assets and liabilities on June 1 to a Successor Company. All contracts between vendors and Predecessor Company are formally re-assigned to Successor Company:

Hypothetical One:

Predecessor Company acquired goods from a vendor on May 15 that were subsequently sold to Successor Company in the reorganization. Predecessor Company is invoiced for these goods by the vendor on May 31. The invoice is paid by Successor Company on July 1.

A. *Please confirm whether Predecessor Company or Successor Company is eligible to claim the ITCs on the original supply from the vendor?*

B. *If Predecessor Company must claim the ITCs, will CRA need to ensure it is booked to a G/L that no longer exists? Will a listing of invoices that were paid directly by the Successor Company be sufficient to satisfy CRA's ITC requirements?*

C. *Will Predecessor Company be required to maintain a separate G/L until all of the ITCs are cleared?*

Hypothetical Two

Predecessor Company acquired goods from a vendor on May 15 that were subsequently transferred to Successor Company in the reorganization. Predecessor Company was invoiced for these goods by the vendor on June 15 and Successor Company paid the invoice on July 1.

D. *Do the above answers change?*

Hypothetical Three

Predecessor Company acquired goods from a vendor prior to the reorganization and was invoiced on May 15. Predecessor Company was not charged GST/HST at that time. On December 1, the vendor issued an invoice for only the taxes that were due in relation to the supplies made on May 15.

E. *Please confirm whether Predecessor Company or Successor Company are eligible to claim the ITCs.*

25. Update Regarding Proposed Amendments to Pension Plan Legislation (Finance and CRA)

TEI would like to thank Finance for proposing amendments to the ETA that address double-taxation that currently occurs for employee pension plan structures that use master trusts.

Currently, pension plan structures with master trusts run the risk of being double-taxed when the employer contracts with an investment manager, trustee, or others to provide services and arranges for the trustee of the master trust to pay the fees directly from the master trust. This practice allows for a simple distribution of the fees to the trust units, reducing unit values. The employer is required to calculate and remit tax on the actual supply. The employer is also deemed to have made a supply of these services to the master trust and is liable to collect tax from the master trust on that deemed supply. However, the master trust would not be able to recover such tax.

Other pension plan sponsors who contract for identical services but arranged for pension plans to pay for these fees directly, after allocations have been determined and trust units redeemed, do not face duplicate taxation. However, this method is neither efficient nor the industry norm. As a result, employers who utilize master trusts in the aforementioned manner for many years bear a disproportionate tax burden versus the other employers, some of which may be industry competitors.

The proposed amendments prevent double-taxation on a going forward basis by amending the deemed supply rules under section 172.1 of the ETA to account for supplies made by an employer to a master pension entity with respect to pension activities. The amendments are applicable to fiscal years commencing on or after 22 July 2016. Thus, pension plan structures with a master trust will be double-taxed prior to that date if the master trust was subject to tax on the actual supply and deemed supply, as no rebate would be available on actual supplies for years prior to announcement date.

Questions for Finance:

A. *Please confirm how the pension plan structures with a master trust would be taxed prior to the announcement date?*

B. *Why were the amendments not applied retroactively so that companies that have been or will be assessed for prior periods are eligible for relief easily rather than having to apply for refunds?*

C. *Should the definition of "employer resources" in section 172.1 of the ETA be interpreted to include the fees discussed above to ensure full elimination of double-taxation for applicable refunds of assessments?*

D. *Does section 172.2(2) restrict the "designated entity" to a single entity?*

E. *The Master Pension Factor of 90% may effectively eliminate the use of the section 157 election because that election is not available to related party company structures. Pension trusts are often used because of related party structures. Is Finance aware of this result and was this result intentional?*

F. *Is Finance aware that the amended definition of "excluded activity" in subsection 172.1(1) will essentially exclude from the deemed supply rules certain activities undertaken "exclusively" in relation to a part of a hybrid plan that is a defined contribution plan?*

Questions for CRA:

G. *Please explain what CRA's audit policy will be for years prior to the amendment.*