TAX EXECUTIVES INSTITUTE, INC.

INCOME TAX QUESTIONS

Submitted to

CANADA REVENUE AGENCY

NOVEMBER 15, 2016

Tax Executives Institute welcomes the opportunity to present the following comments and questions on income tax issues, which will be discussed with representatives of the Canada Revenue Agency during the November 15, 2016 liaison meeting. If you have any questions about the agenda in advance of the meeting, please do not hesitate to call Steve Perron, TEI's Vice President for Canadian Affairs, at 514.841.3412, or Paul Magrath, Chair of TEI's Canadian Income Tax Committee, at 905.804.4930.

A. Introduction

In prior years, the Assistant Commissioner for Legislative Policy and Regulatory Affairs has provided a helpful update on the Agency's overall strategic direction. We invite the Assistant Commissioner to provide an update that includes his thoughts on the vision for the future of the branch and feedback on the role TEI can play in achieving that vision.

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

1. *Employer-Provided Social Events*

As discussed at the 2013 Liaison Meeting with the CRA, and reviewed again at last year's meeting, the CRA was prepared to consider an upward adjustment to the allowable amount for employer-provided social events to take inflation into account since the guidance was first introduced almost 20 years ago. We are listing below some data points on what these average costs are for different cities and we kindly request the CRA provide us with an update on this review. TEI also recommends the CRA increase the employer-provided social-events cost threshold to $200 per person to account for the rising costs of providing social events to employees, with any amounts above this threshold being treated as a taxable benefit to the employee. The following information about the costs of employer-provided social events was accumulated from TEI members and relates to holiday-season parties in the cities listed below, which show the difficulty in hosting such events in metropolitan areas under a $100 per-person limit:

	Calgary	Edmonton	Montreal	Sudbury	Toronto	Vancouver
Food, beverage, entertainment	$125.00	$125.00	$153.00	$103.00	$115.00	$119.00
GST/HST/QST	$6.25	$6.25	$22.91	$13.39	$14.95	$21.42
Gratuity (18%)	$22.50	$22.50	$27.54	$18.54	$20.70	$5.95
Total	$153.75	$153.75	$203.45	$134.93	$150.65	$146.37

In CRA's response to TEI's 2015 follow-up on this matter, CRA noted that ancillary costs, which we interpret to mean costs such as taxi fares and overnight accommodations, are excluded from the $100 per-person threshold, and therefore certain inflationary pressures have already been reflected in the threshold. However, TEI respectfully does not believe the increasing cost pressures in the hospitality industry are adequately included in the $100 threshold.

2. *Gift Cards*

During the 2015 liaison meeting, the CRA mentioned it would review the guidance on gift cards provided to employees to consider amending that guidance so that gift cards would qualify for exclusion from treatment as a taxable benefit. This would be a welcome change as it is an issue that creates a significant compliance burden on our members to track, report, and appropriately tax what are arguably nominal amounts. Can the CRA provide an update as to the consideration of this issue? In addition, we recommend that gift cards with a value at or below $50 each, and at or below $200 in total over a year, not be treated as a taxable benefit with the full amount of any gift card above $50, or any amounts received above $200 annually, treated as a taxable benefit.

3. *Section 55(2) Guidance on Determination of Safe Income*

It was mentioned at the 2016 Annual TEI Conference that Rulings will be working on a safe-income publication. We understand, however, that a formal publication may not be forthcoming, but that the CRA would be willing to provide guidance to assist in situations where there is ambiguity resulting from various amendments to section 55, in addition to its previously published guidance. TEI would welcome the opportunity to consult with the CRA on a number of practical concerns that are emerging as taxpayers consider how to work through the recent changes to section 55.

As the CRA is aware, the recent changes in this area are of great interest and concern to many taxpayers in Canada, particularly for large businesses that often have a long-standing history of Canadian operations and are struggling to determine workable approaches to safe-income calculations. Historically, taxpayers have not had to rely on such calculations to support intercompany cash dividends, and there are considerable practical issues related to these calculations, such as information not being available due to archival information loss, documentation destruction policies, corporate reorganizations, etc. In an effort to provide the CRA with greater insight into some of the issues that taxpayers are dealing with, we present the

following as examples of areas about which we would like to commence a dialogue and, ideally, a consultative process. While TEI welcomes any thoughts the CRA may have to the following areas, we offer these as just a few examples of a broader range of administrative issues we believe would be best addressed through a consultative process.

a. Given the historical records required to prepare safe income calculations, what type of practical approaches and assumptions could the CRA accept when it comes to relying on the amounts determined (i.e. accounting retained earnings) as a starting point to support the opening balance of "safe income on hand" as of the time these provisions were enacted?

b. Could the CRA provide access to historic tax returns, assessments, and reassessments dating back to the incorporation of the entities required to prove "safe income on hand"?

c. What type of audit practices can taxpayers expect to be adopted and implemented related to supporting documentation used to calculate "safe income on hand"?

d. Safe income is computed in reference to a share that begins when a taxpayer acquires the share and ends at the safe-income determination time. Under subsection 55(1), the safe-income determination time is the earlier of the time that is immediately after a transaction with an unrelated person as described in subsection 55(3)(a) as part of the series, and immediately before the earliest dividend paid as part of the series. Could CRA provide additional guidance on the safe-income determination time where a company pays a regular dividend, either on a monthly, quarterly, or annual basis but does not enter into a transaction with an unrelated person under subsection 55(3)(a)?

e. The CRA's position had been that contingent liabilities and accounting reserves, such as future employee benefits and pension obligations, reduce safe income on hand when they are set up. In *Kruco v. The Queen*, [2003] F.C.A. 284, the court had held that safe income should be reduced by cash outflows. Has CRA's position changed in light of *Kruco*?

4. *Regulation 102*

a. Update on TEI Correspondence

The issues associated with Regulation 102 are very important to TEI members in Canada and abroad. On November 17, 2015, a Regulation 102 working group comprised of TEI members met with members of the CRA, including Mickey Sarazin, and members of the Department of Finance. That working group followed that meeting with a letter dated March 17, 2016, a copy of which is attached hereto as Appendix "A." At the May 2016 TEI Canadian Tax Conference, the CRA's Randy Hewlett commented that the CRA was reviewing and

considering the March 17, 2016 letter. That letter provided an example illustrating a situation in which a corporation could view the rules as burdensome for various reasons and made six recommendations to simplify the process, including simplifying the prescribed Form RC473. Can the CRA provide an update on its position with respect to each of the letter's recommendations and, if a particular recommendation is not expected to be adopted, the reasons why?

b. Certification update

Can the CRA provide an update on the Form RC473 certification process (including any statistics that may be available on the number of applicants, number of certifications granted, issues experienced to date, etc.), related audit activity, and whether the CRA is considering any other changes to the process or prescribed Form RC473?

5. *Electronic Filing of Mutual Fund Trust Returns and Other Online Services*

In its response to TEI's 2014 liaison-meeting request for an update on electronic filing of tax returns being made available to mutual fund trusts, the CRA stated: "Our strategic goals include exploring the feasibility to offer more enhanced online options that are secure, reliable, and easy to access. As operational realities improve, the Agency may be in a position to target the improvement for the assessments of trust income tax returns." We understand that limited types of trusts are now able to file electronically. Can the CRA provide an update as to when it may be in a position to offer the electronic filing of mutual fund trust returns and other online access to manage such tax accounts?

C. Administrative Matters

1. *Allocation of Resources & Expertise*

In the 2016 Federal Budget, the Minister announced that $444.4 million would be invested over five years for the CRA to "enhance its efforts to crack down on tax evasion and combat tax avoidance by: hiring additional auditors and specialists; developing robust business intelligence infrastructure; increasing verification activities; and improving the quality of investigative work that targets criminal tax evaders." Can the CRA comment on how these funds will be used? In addition, can the CRA specifically comment on the following issues?:

a. *Access to Information Requests*

Taxpayers commonly request information from the CRA under the *Access to Information Act* subsequent to a reassessment in order to access information that the CRA has about the matter. The CRA typically responds to these requests by requesting an extension for its response time beyond the 30-day statutory time limit, often in excess of one year. The CRA has stated in correspondence with taxpayers that meeting the statutory time limit would "unreasonably interfere with the CRA's operations." Will the CRA commit additional resources

to the Access to Information branch in order to reduce the time delays in the CRA responding to access to information requests?

b. *Appeals Procedures*

Many of TEI's members have experienced a substantial increase in the time it takes to resolve issues at Appeals, possibly due to lack of resources for large-case files and the empowerment to make decisions at Appeals. Large taxpayers that had previously experienced resolutions at Appeals in 12-18 months are now reporting that similar resolutions are taking at least triple the time. This creates an undue burden for the taxpayers who have to pay, or put up security, for 50 percent of the tax owing. Furthermore, due to the length of time to have an appeal resolved, it becomes increasingly difficult to find employees of the taxpayer who have knowledge of the issue, putting successful resolution of the issue in jeopardy. Can the CRA comment on whether and, if so, how any additional resources will be allocated to addressing the backlog of large-case file issues at Appeals? Also, what additional procedures, authorities, and mandates will be provided to the Appeals divisions to conclude large-file case appeals in a timely manner and not create additional backlogs?

c. *Audit & Rulings Resources*

The audit teams for a number of TEI members are now based in locations other than the location of the taxpayer's offices. In addition, Rulings officers who often support audit activities are no longer centralized in Ottawa but are situated in various locations across the country, often working remotely. TEI understands these changes have been made to make the most efficient use of limited resources and, particularly in the case of Rulings, access additional expertise. In some cases, however, it has been the experience of TEI members that "out-of-city" field auditors lack the industry-specific expertise or familiarity with the taxpayer's business to conduct focussed inquiries, resulting in an unfocussed approach to audits that is not efficient for the taxpayer or the CRA. We understand the CRA has a variety of programs, including on-line training, available to address this issue, and TEI commends the CRA for its efforts in this regard. Can the CRA provide an update on any further developments in these areas? In particular, can the CRA:

i. comment on whether any additional resources will be allocated to ensuring field auditors obtain sufficient expertise to conduct focussed and efficient audits; and

ii. provide an update on CRA programs or initiatives to facilitate coordination between taxpayers, out-of-city auditors, and Rulings?

2. *CRA Online Account*

a. General Update on My Business Account

The CRA continues to introduce new features to the online My Business Account system, making the system increasingly useful for taxpayers. TEI invites a discussion on the new features recently added to My Business Account and the CRA's upcoming plans for features to be added that will be of benefit to large corporate taxpayers.

b. Corporate Taxpayer Representative Authorizations

The addition of the "GroupID" feature in CRA's Online My Business Account system has been a very effective tool for allowing businesses to add and remove new representatives quickly. When authorized employees are listed as members of the GroupID, they can access the online information they require. However they are frequently not able to get the same information or other information over the phone even though the addition of a GroupID on the RC59 form states that the authorization for the online access also includes telephone, fax, and mail. The reason for this seems to be that in some cases CRA's representatives cannot see the list of members that are part of the GroupID. Would the CRA consider making available the GroupID's members to its representatives? Does authorizing an employee as a "Senior Representative" using the Group ID feature provide the employee with the same level of authorization as a Level 2 on Form RC59?

3. *Collections Matters*

Income tax assessments issued to large corporate taxpayers immediately trigger payment obligations, even when the taxpayer is formally disputing the assessed amounts. This includes non-resident withholding tax and penalty assessments. Because disputes can take years to resolve, taxpayers may prefer to post security instead of paying cash. Some provinces will accept surety bonds for provincial tax obligations, and the CRA accepts surety bonds for non-income tax obligations. In contrast, the CRA has a practice of accepting letters of security from accepted Canadian institutions as security but does not appear to accept surety bonds for income tax obligations. Why does CRA accept letters of credits as security but not surety bonds?

D. Audit/Appeal Matters

1. *Bifurcation of Issues for Court Appeal*

The intent of subsection 171(2), regarding partial disposition of appeal, is to reduce the Tax Court of Canada's caseload and allow independent disposal of some issues. We understand that some taxpayers have experienced denials of bifurcation requests under subsection 171(2) and that the Department of Justice may be averse to the bifurcation of appeals issues.

TEI believes bifurcation is an important tool for improving the Tax Court's caseload management and that failure to bifurcate could have an adverse effect on a taxpayer who has requested such bifurcation. For example, a taxpayer may be reassessed on an issue within the normal reassessment period and file a notice of appeal in the Tax Court. The CRA may subsequently audit the taxpayer on transfer-pricing issues for the same taxation year under the extended reassessment period and issue a subsequent reassessment. The second reassessment would invalidate the litigation unless the notice of appeal is amended to include the new reassessment.

The taxpayer may want to use the competent authority procedure to resolve the transfer pricing matter, while continuing to litigate the original issue in Tax Court. IC 71-175R5, "Guidance on Competent Authority Assistance Under Canada's Tax Conventions" states that if a taxpayer proceeds with an appeal to a Canadian court on a matter under competent authority consideration, the competent authority process will be terminated unless the appeal is held in abeyance. It would be beneficial for the taxpayer to bifurcate the transfer pricing issue from the original issue in this circumstance so that the transfer-pricing matter can be resolved by competent authority and the Tax Court litigation on the original issue can separately continue.

We believe that a refusal by the DOJ to bifurcate may impose undue time and cost on the Tax Court, the DOJ, and the taxpayer associated with a court appeal for all issues in a tax year. Are there guidelines that the CRA uses to provide recommendations to the DOJ as to when consent should or should not be provided to bifurcation of appeal issues in a tax year? Can the CRA comment on the circumstances when it would recommend not consenting to bifurcation of appeal issues if bifurcation is requested by a taxpayer? If the DOJ also has input into the decision of the CRA's counsel on bifurcation, can the CRA comment on the input and guidance received from the DOJ with respect to bifurcation requests? Finally, can the CRA comment on the example set out above, where bifurcation would allow a taxpayer to use the competent authority procedure if an unrelated issue is already in Tax Court for the same tax year?

2. *Audit Approach*

To exercise its role with respect to the administration and enforcement of the Income Tax Act, the CRA has been granted powers to access taxpayer's information. Section 231.1 permits the CRA to inspect, audit, or examine the books of a taxpayer and entitles auditors to request and examine documents, including computer records. Section 231.2 entitles CRA to issue a request for information, which is a more formal procedure, whereby a formal "demand" or "requirement" is issued. Generally, it is our understanding that the case law suggests that section 231.2 is not to be used where section 231.1 is sufficient. If a taxpayer does not provide access to the information, the Minister can seek a court order for compliance under section 231.7. The powers of the CRA under section 231.1 of the Act are very broad and permit the auditors to access any document "that relates or may relate to the information that is or should be in the books or records of the taxpayer or to any amount payable by the taxpayer under the Act."

Section 10.8.3 and following of the CRA Audit Manual provide guidance as to how the CRA should approach a request for information and documents. Generally, the objective is to obtain the evidence necessary to adequately evaluate the matter at issue without requesting too much documentation, using professional judgment and reasonableness, considering the circumstances. Reasonable time should be given in order to comply, normally 30 days. Before issuing a requirement as a result of significant non-compliance with an information request, the CRA must demonstrate that all actions have been taken to achieve compliance and indicate the responses or actions of the non-compliant taxpayer.

TEI understands that the CRA encourages open communication with taxpayers in connection with requests for information and documents, and this has been the experience of many TEI members. In those cases, the audit team discusses the scope of the audit openly and would agree with the taxpayer on the amount and timing of the information to be provided. However, some TEI members have experienced a more rigid and formal approach to requests for information, with deadlines that are not realistic under the circumstances. In these cases, the auditors have also inserted a statement in the request that if the deadline is not respected, procedures under section 231.2 will be taken. TEI is of the view that this approach not only causes unnecessary and undue strain on the taxpayer's resources but is also detrimental to the CRA in that it results in adversarial discussions and increased administrative procedures, which are counterproductive to the CRA's efforts to become current in audits.

Could the CRA confirm TEI's understanding that requests for information should be based on open dialogue and follow a reasonable approach, considering the circumstances? Could the CRA comment on the procedures that must be followed prior to issuing formal and rigid requests for information referring to section 231.2? What actions are taken to ensure consistency in the approach between different audit teams and TSO?

3. *Gross Negligence Penalties*

The Act contains a number of provisions that permit the application of penalties if a taxpayer has made an omission on a return in circumstances amounting to gross negligence. It is clear from the case law that a high standard must be met in order for a gross negligence penalty to stand: "[g]ross negligence must be taken to involve greater neglect than simply a failure to use reasonable care. It must involve a high degree of negligence tantamount to intentional acting, an indifference as to whether the law is complied with or not." *Venne v. The Queen*, [1984] CTC 223 at 234 (FCTD).

Some TEI members have recently experienced an increase in field auditors proposing to levy gross negligence penalties. It appears that such penalties may be applied by field auditors in circumstances that do not reach the threshold set out in the case law or the guidance issued by the CRA in its audit manual for the application of such penalties. For example, in one instance a field auditor proposed to levy a gross negligence penalty because an amount was inadvertently underreported on an information return in circumstances where the taxpayer promptly brought the omission to the CRA's attention. No taxes were owing as a result of the

omission on the information return. In another instance, an accounting error was made by a taxpayer, and the field auditor advised that the error would need to be reviewed by Head Office to determine if gross negligence penalties should be applied. In both of these instances our members had to allocate significant resources to defending against the proposed application of the penalties.

Our members take their compliance obligations very seriously and are committed to ensuring proper compliance. Therefore, the proposed application of gross negligence penalties is always of concern.

Could the CRA confirm TEI's understanding that gross negligence penalties should not be applied solely because a taxpayer made a mistake or took a filing position that differs from CRA's view on the interpretation of the Income Tax Act or the Regulations? Could the CRA comment on the procedures that must be followed to assess whether gross negligence penalties should be levied, what level of approval is required at the TSO and Head Office, and in what circumstances an assessment of gross negligence penalties is required? Could the CRA provide examples of situations where they consider gross negligence penalties appropriate? What actions are taken to ensure consistency in the approach between different audit teams and TSO?

4. *Assessment Procedure Under the General Anti-Avoidance Rule*

Our understanding is that the GAAR Committee must approve any reassessment invoking the general anti-avoidance rule ("GAAR") under section 245 prior to such reassessment being made. However, it appears that TEI members have had different experiences in terms of matters going before the GAAR Committee. In some cases a matter has gone to the GAAR Committee prior to the taxpayer receiving a proposal letter regarding a proposed assessment. In other cases some TEI members have been reassessed under GAAR without the GAAR Committee first having reviewed the matter, contrary to our understanding set out above. Large taxpayers would appreciate greater transparency as to how the GAAR Committee operates from a procedural perspective. Can the CRA comment on what procedures must be followed before a taxpayer can be reassessed under GAAR? Specifically:

a. Can a GAAR reassessment be made if a matter has not gone before the GAAR committee?

b. If the response to (a) is yes, can the reassessment only be made if a similar matter has gone before the GAAR Committee, or can the CRA reassess under GAAR without ever having taken the matter to the GAAR Committee?

c. Do the answers to (a) or (b) change if GAAR is the secondary, as opposed to the primary, assessing position?

d. Do taxpayers have to be informed prior to a matter being referred to the GAAR Committee so that they have the ability to make representations to the GAAR Committee?

e. Can the CRA comment on the composition of the GAAR committee? Specifically, how many individuals from the CRA, the Department of Finance, and the DOJ sit on the GAAR Committee, how often are the positions rotated, and does membership change based on the topic before the committee?

f. Can the CRA comment on the process followed for GAAR Committee referrals at the proposed assessment stage? Our understanding is that the process is generally as follows:

   i. TSO refers the matter to TSO Aggressive Tax Planning ("ATP"),

   ii. If TSO-ATP determines that the proposed assessment should move forward, the matter then gets referred to the HQ-ATP.

   iii. HQ-ATP determines whether the matter should be referred to the GAAR Committee.

   iv. GAAR Committee referral.

Can the CRA comment on whether this is correct?

5. *Transfer-Pricing Penalties*

In today's business environment, corporations take their legal and regulatory compliance obligations very seriously and have robust programs in place to ensure compliance is a priority throughout the organization. In this environment, penalties in particular are heavily scrutinized, and organizations are expected to take action to ensure that, to the greatest extent possible, penalties are avoided and do not recur. As a result, when penalties are assessed it is important for taxpayers to gain an understanding of the bases for the penalties so that the taxpayers can ensure compliance going forward. In this respect, TEI invites a discussion on responses provided by the Transfer Pricing Review Committee ("TPRC") in situations when penalties under 247(3) are applied.

As background, the TPRC reviews all transfer pricing adjustments in excess of 10 percent of gross revenue or $5,000,000 to determine if penalties should be applied under subsection 247(3). As explained in CRA's TPM-09, in determining whether the transfer pricing penalty is applicable, it is necessary for the taxpayer to show it made reasonable efforts both in establishing and using arm's length pricing. The general determination of whether a taxpayer has made reasonable efforts to determine and use arm's length transfer prices or allocations is a question of fact. Clearly this determination is not easy or straight-forward. Unfortunately, the TPRC typically provides a very brief response when it decides to apply penalties under subsection 247(3). Therefore it is very difficult for taxpayers to fully understand the bases upon which the TPRC concluded the taxpayer's documentation did not meet the required standard. As a result, it is difficult for taxpayers to ensure they have corrected the deficiency going

forward. Would the CRA consider providing a more detailed response in situations where penalties under subsection 247(3) are asserted?

6. *"Bucket" Approach to Audits*

Personnel for the CRA's Competent Authority Services Division stated on August 30, 2016 at a transfer-pricing conference in Toronto that the CRA and the U.S. Internal Revenue Service ("IRS") "are in preliminary, informal discussions" about the possibility of expanding a joint audit program employing a "bucket" approach to audits. What is meant by a "bucket" approach and what are the circumstances under which the CRA and the IRS might jointly audit a Canadian corporate taxpayer? What are the possibilities of this program becoming a reality and when might it begin on a regular basis? Is the CRA considering the possibility of corporate taxpayers being able to request such joints audit when already being audited in both Canada and the United States?

E. Technical Matters

1. *Country-by-Country Reporting*

Now that the Department of Finance has released proposed legislation implementing country-by-country reporting in Canada, can the CRA comment on whether any efforts will be made to streamline some of the related-information reporting forms, such as T106s and T1134s? If so, who will be part of the process to streamline?

2. *Benefits and Allowances Received from Employment*

On July 6, 2016 the CRA published a new Income Tax Folio Chapter S2-F3-C2 *Benefits and Allowances Received from Employment.* While it appears that this chapter is intended to be a consolidation and restatement of former publications and previously communicated positions, there seem to be some inconsistencies and changes in positions. In particular, TEI has identified the following four items that we request the CRA consider and address in an update to this chapter.

a. Primary Beneficiary: "Incentive" Trips (Paragraph 2.25)

Paragraph 2.25 states that the employer is the primary beneficiary of employee trips that are taken for "employment-related reasons" where the employee is engaged directly in employment activities during a substantial part of each day. The next sentence states that where an employee receives a trip as an "incentive or award," the employee is the primary beneficiary of the trip. These two sentences imply a dichotomy where "incentive trips" and "employment-related" trips are mutually exclusive categories. This is in contrast to earlier CRA positions such as CRA Views Document 9905737 in which the CRA stated, "[I]n each case, whether the trip given to the employee by the employer is in respect of a convention,

conference, or *incentive award trip*, the business aspect or the personal benefit must be identified and measured with some reasonableness." (emphasis added)

Trips offered by employers to high-performing employees might be considered "incentives" from the employees' perspectives but may serve valuable primary business purposes from the employers' perspectives. For example, gatherings of high-performing employees may provide valuable networking and educational opportunities, particularly in the context of business sessions or other business-related events that may take up a substantial part of each day. We believe that such a trip consisting of a group of employees participating in a company structured program is distinguishable from a vacation given to an employee to enjoy at his or her leisure. The business is the primary beneficiary of the former whereas the employee is the primary beneficiary of the latter.

Would the CRA be willing to amend paragraph 2.25 to account for trips that may be viewed by employees as "incentives" but serve a primary business purpose for the employer? Such amendment would be consistent with prior CRA positions and case law, including *Lowe v. The Queen*, [96] D.T.C. 6226 ("However, where an employee receives a trip as an employment incentive or award *and is not engaged in employment/business activities during a substantial part of each day of the trip*, the employee is the primary beneficiary….") (emphasis added).

b. Economic Advantage: Reimbursements (Paragraph 2.16)

Paragraph 2.16 states that "a reimbursement is a payment (…) for which detailed receipts are provided." "Detailed receipts" are not mentioned in Guide T4130, which states more generally that "[t]he employee has to keep *proper records* to support the expenses and give them to the employer." (emphasis added). Paragraph 2.16 therefore appears to reflect a change in position where the CRA now specifically expects employees to provide detailed receipts. However, the next sentence in paragraph 2.16 states that the employee is required to submit receipts "or" show the employer how the amount was spent.

Would the CRA be willing to amend paragraph 2.16 to clarify whether "detailed receipts" are always required? If detailed receipts are not always required, would the CRA consider changing the first sentence of paragraph 2.16 to read as follows, so that it is consistent with Guide T4130?: "A reimbursement is a payment made to repay an amount an employee spent on a specific expense and for which *proper records are provided to the employer*. When an employee is required to submit receipts or *otherwise* show the employer how the amount was spent…."

c. Third-Party Benefits: Reporting (Paragraphs 2.27-2.28)

Paragraphs 2.27 and 2.28 and their corresponding examples describe situations where an employee must include in income the value of a benefit provided by somebody other than the employer. Paragraph 2.69 states that, generally, benefits included in an employee's income must be reported and subject to income-tax withholding. However, the chapter remains silent on whether the third-party benefit is to be reported by the employer, a third party, or self-reported by the employee for benefits. For example, CRA Views Document 2010-0388581E5 states that gifts from customers are subject to income tax, but does not comment on either the employer's or the customer's reporting obligations. In other documents, the CRA's position appears to be, consistent with section 153, that the person paying the benefit is responsible for the reporting. For example, the CRA's policy on "Awards from a Manufacturer" states that if a manufacturer gives a cash or non-cash award directly to the employee of a dealer, the manufacturer has to report the value of the award on a T4A. Similarly, in CRA Views Document 2011-0401781E5, the CRA stated that the reporting of a settlement of union grievances must be done by the entity that distributes the settlement, either the employer or the union. There are also situations, such as with loyalty points for credit-card expenses, where it is the employee's responsibility to self-report the fair-market value of the personal rewards received.

Can the CRA comment on whether it would be willing to amend paragraphs 2.27 and 2.28 to clarify which party has the reporting responsibility for third-party benefits. For example, the guidance could state: "This means that a benefit may be included in an employee's income even if the benefit is not provided by the employer. The obligation to report and/or withhold on the value of the benefit (see paragraph 2.69) is the responsibility of the person who has custody and control over which individual the benefit will be provided to, which custody and control may be had in either the employer or the third party depending on the circumstances."

Taxpayers can experience significant compliance burdens in situations in which a third-party payer must report a payment issued to a non-employee. Because there is no existing employer/employee relationship, the payer typically does not have the required information on hand, such as SIN and home address, and the required slips are incremental reporting. Given the compliance burden associated with third-party benefit reporting, would the CRA consider extending the same $500 reporting threshold that exists for non-cash gifts and awards received from an employer to benefits received from third parties?

d. Value of a Benefit: Intangibles (Paragraph 2.26)

Paragraph 2.26 defines "fair market value" and states that the fair market value of the benefit is to be included in the employee's income. Past CRA positions, such as CRA Views Document 2010-0377261E5, have discussed items where the fair market value cannot be determined. That document states, "Where the fair market value cannot be determined with any degree of certainty, it may be reasonable to consider the employer's cost as a measure of the benefit. However, the employer's cost is not necessarily indicative of the value of the benefit and generally should only be used where the value of the benefit to the employee cannot otherwise be determined." Registered Charities Newsletter 17 provided an example of something that cannot be valued, in the context of split receipting, which stated: "For example, a dinner with a celebrity cannot reasonably be valued."

Can the CRA comment on whether it would be willing to amend paragraph 2.26 to include a version of the position in CRA Views Document 2010-0377261E5. For example: "The fair market value (…) is the amount included in the employee's income under paragraph 6(1)(a). Where the fair market value cannot be determined with any degree of certainty, it may be reasonable to consider the employer's cost as a measure of the benefit."

F. Conclusion

Tax Executives Institute appreciates this opportunity to present its comments and questions. We look forward to discussing our views with the CRA during the November 15, 2016 liaison meeting.

Respectfully submitted,

Tax Executives Institute, Inc.

By:

Steve Perron
Vice President for Canadian Affairs

ATTACHMENT: APPENDIX "A" – TEI letter dated March 17, 2016