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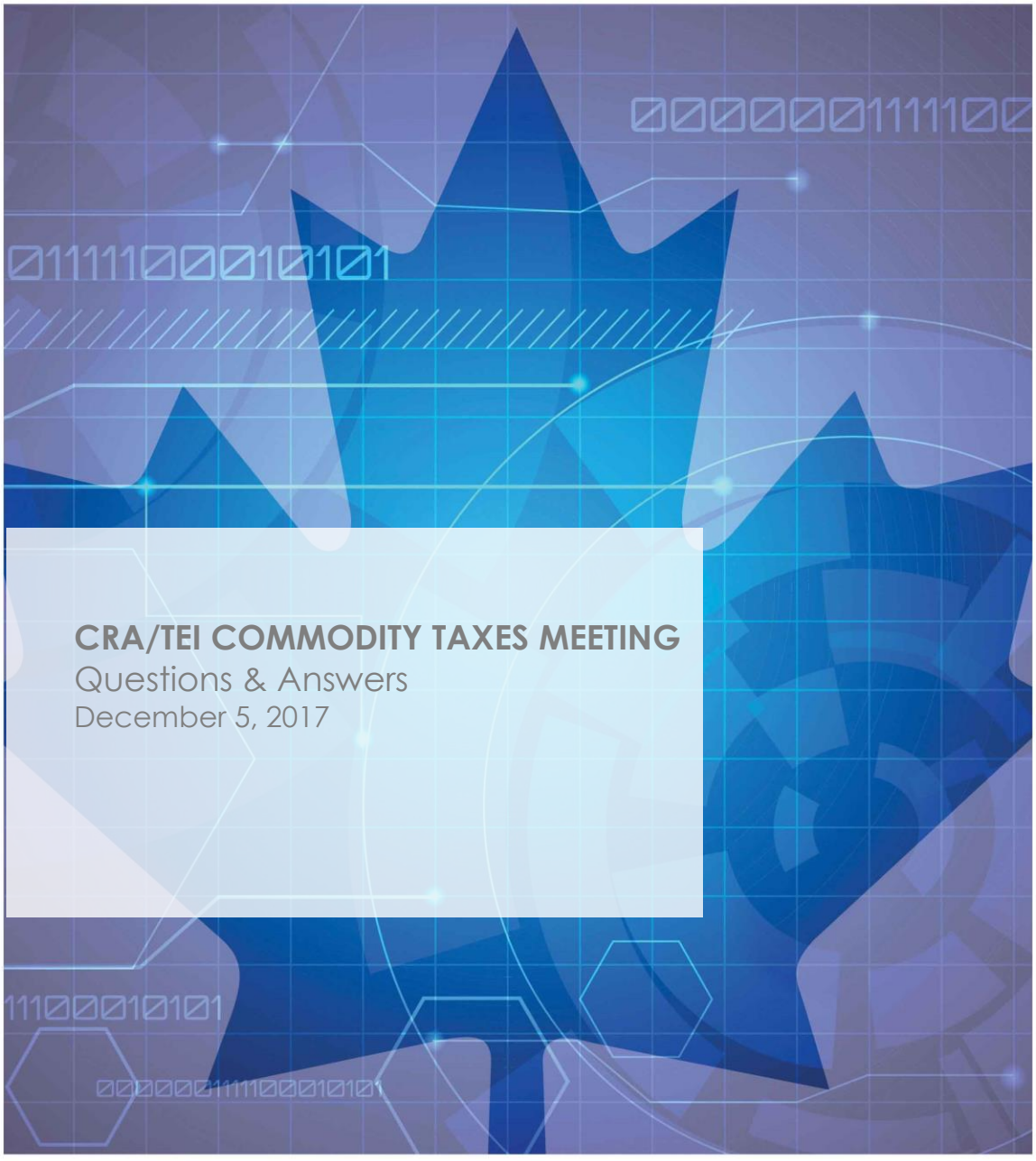

CRA/TEI COMMODITY TAXES MEETING

Questions & Answers

December 5, 2017

Canada

The Canada Revenue Agency (CRA) welcomed the opportunity to discuss the following questions on commodity tax issues with representatives of the Tax Executives Institute.

The following answers to the questions posed by the TEI represent our general views with respect to the subject matter and do not replace the law found in the Excise Tax Act (the ETA) and its regulations. All references to legislative provisions in our comments are references to the ETA unless otherwise noted. These general comments are provided for your reference and do not bind the CRA with respect to a particular situation. Since our comments may not completely address a TEI member's particular situation, you may wish to refer to the ETA or appropriate regulation, or contact any CRA GST/HST Rulings Centre for additional information.

A ruling should be requested for certainty in respect of any particular GST/HST matter. For additional information, reference may be made to GST/HST Memorandum 1-4, Excise and GST/HST Rulings and Interpretations Service. To make a technical enquiry on the GST/HST by telephone, call 1-800-959-8287.

TEI members located in the province of Quebec who wish to make a technical enquiry or request a ruling related to the GST/HST, can contact Revenu Québec by calling 1-800-567-4692.

Exception: The CRA administers the GST/HST and the QST for listed financial institutions that are selected listed financial institutions (SLFIs) for GST/HST and/or QST purposes whether or not they are located in Quebec. If you wish to make a request for a ruling related to the application of GST/HST or QST to these listed financial institutions, refer to GST/HST Memorandum 1-4, Excise and GST/HST Rulings and Interpretations Service for more information. To make a technical enquiry related to these listed financial institutions by telephone, call 1-855-666-5166.

1. Sales of Oil and Gas Resource Properties

Background

When oil and gas resource properties ("Assets") are sold, there is typically a time lag between the effective date and closing date of the contract. This delay could be several months due to the complexity involved in completing transactions for active producing assets.

In general, legal title and ownership to the Assets during this interim period reside with the vendor, which continues to operate the Assets, whereas entitlement to the revenues and the responsibility for the expenses are transferred to the purchaser as of the effective date.

The sale agreement would typically stipulate that, until the closing date, the vendor will maintain the Assets in a proper and prudent manner, in accordance with generally accepted oil and gas industry practices, and in material compliance with all applicable laws.

The sale agreement would also outline the parties' reconciliation procedures during this interim period to arrive at a final adjusted purchase price for the Assets ("Adjustments"). Any resulting payment by one party to another does not constitute a taxable supply for GST/HST purposes. There is no invoice issued, but rather an accounting adjustment that simply increases or decreases the sale price, with one party issuing a settlement payment.

Furthermore, it is common practice within the oil and gas industry to treat such Adjustments (increases or decreases) as a sale price adjustment to

the Petroleum and Natural Gas ("PNG") rights, the supply of which are not subject to GST/HST under section 162 of the Excise Tax Act ("ETA").

Hypothetical

Company A ("Vendor") is selling oil and gas assets located within Alberta to Company B ("Purchaser") using the typical 80%-20% purchase price allocation that assigns values between mineral rights (80%) and tangible assets (20%). The effective date of the contract is July 1, 2016 and closing date is September 1, 2016.

PNG Right $80,000,000

Tangibles $20,000,000

Misc. Interest $100

Total Purchase Price $100,000,100

On the closing date, 5% GST/HST will be charged to the Purchaser on the value of tangibles and miscellaneous interest.

The final statement of adjustments prepared on October 1, 2017 (for the period July 1, 2016 to September 1, 2016) is as follows:

Revenues: $100,000

Expenses:

Royalty $20,000

Property Taxes $15,000

Operating Costs and Expenses $170,000

Environmental Taxes $5,000

Rentals – Mineral $50,000

Rentals – Surface $1,000

Total Expenses $ 261,000

Due to Vendor ($ 161,000)

Question

A. Please confirm that the Vendor does not need to charge the Purchaser GST/HST on the total expenses of $261,000. If GST/HST is determined to apply to all or a part of the above amount, please explain why.

Questions

The industry's general practice is to allocate 80% of the sale price for producing resource property to the PNG rights and 20% to the tangible properties. CRA has allowed this 80-20% allocation.

However, the terms of any sale agreement normally reflect the particular transaction agreed to by the parties, the circumstances surrounding the agreement, and the sale price allocation. The industry thus may deviate from this allocation if necessary to obtain a more representative allocation. For example, it might use a 90-10% or 95-5% ratio for the sale of

resource properties comprised primarily of shut-in wells that have minimal tangible properties.

B. What is CRA's position on the typical 80-20% sale price allocation for resource properties?

C. What standards will CRA use to evaluate a deviation in the event the parties to a transaction determine the typical 80-20% sales price allocation is inappropriate?

D. What type of supporting documentation would CRA rely upon to determine whether a non-typical sale price allocation is appropriate?

CRA Comments

A. We would need to review the particular agreements for a transaction and all relevant facts in order to provide a definitive response, particularly to determine the characterization of each particular supply and the characterization of the nature of the relationship between the seller and the purchaser. For example, where the seller operates as an agent of the purchaser for the period between the contract date and the closing date, the GST/HST status of the amounts could be affected.

In the absence of any agreements we provide the following general comments:

You are proposing that the various adjustments receive the same GST/HST treatment as the supply of the right to explore or exploit a natural resource. That supply is deemed not to be a supply and any royalty

charged or reserved regarding the right is deemed not to be consideration under subsection 162(2) of the Excise Tax Act.

In the above example, the royalty payment may be deemed not to be consideration for a supply under section 162(2). However, it is unclear how the property taxes, the operating costs and expenses, and environmental taxes could be characterized as further amounts in respect of a right to explore or exploit a natural resource. We would appreciate having a discussion with TEI members in this regard. Further information would also be required to address the GST/HST status of the items characterized as Rentals – Mineral and Rentals – Surface.

B. The appropriate fair market value purchase price allocation for intangibles and tangibles should be evaluated in the context of the actual resource property acquired or disposed of and will vary depending on the types of wells, size of reservoirs, nature of drilling and the facilities. The 80/20 rule of thumb was for conventional wells drilled in the late 1970s and 1980s. This rule was based on average costs for wells other than foothills wells and it was developed in consultation with industry engineers. An 80/20 split may still be accepted for conventional wells. However, for example, where gas plants are part of the sale, one would expect the tangibles to have a higher ratio. The same might apply to offshore projects that have a large tangible component. Conversely, the sale of undeveloped land might have a tangible component that is less than 20%.

Finally, we wish to point out that 80/20 is an old rule based on certain facts and is not the law.

C. The CRA would consider factors such as the types of assets and the materiality of the transaction.

D. The best documentation would be a timely valuation of the specific assets by an accredited third party valuator. Sometimes this is not possible but the vendor should be able to arrive at an accurate value of the petroleum and natural gas rights sold as most have an annual reservoir valuation done.

2. Audit Assessments Based on Auditor Requested Rulings

What is the assessment protocol when an auditor has requested a ruling from CRA's headquarters? Is it appropriate for an auditor to issue an audit proposal and/or the final audit assessment before CRA's headquarters has issued the ruling?

CRA Comments

Audit generally keeps the file open until they have received guidance from other program areas. However, when reporting periods under audit are approaching a statute-barred date, subsection 298(7) of the ETA provides for the filing of a waiver to delay issuing a notice of assessment beyond the normal reassessment period. If the registrant does not provide a waiver, the auditor and the team leader will consider the facts on a case-by-case basis. The results of the review will determine whether the CRA will issue a proposal and finalize the audit (re)assessment at the end of the representation period.

3. Drop Shipments

The rules relating to drop shipment transactions recently changed. Registrants are required to create their own drop shipment certificates or pay GST/HST consultants to do so, and such certificates inadvertently may not meet all the required criteria. Would CRA consider creating a standardized drop shipment certificate(s) that reflect the new rules?

CRA Comments

We are currently updating Memorandum 3.3.1, Drop-Shipments to reflect the proposed new legislation and expect to release it next year. As is the case with the sample drop-certificate that is included in the current version of the publication, the updated publication will include sample certificates that reflect the new rules and will be acceptable to the CRA.

4. Emission Allowances

Quebec linked its Cap and Trade program ("C&T") with California on January 1, 2014. The C&T program provides for the resale of emission allowances between parties that have registered for the C&T program and have been assigned a Compliance Instrument Tracking System Service ("CITSS") account. The CITSS account is a closed electronic inventory system, as only persons registered under the C&T system are assigned accounts.

Emission units originate at auction and are issued by the jurisdiction holding the auction (i.e., California or Quebec) and placed into the CITSS

account. Offset credits that stem from emission reductions in sectors not caught by the C&T system add to the emission allowances available. Both emission units and offset credits (collectively, "Emission Allowances") may be used by a market participant to settle its obligations under the C&T system.

The rules surrounding the transfer of Emission Allowances for Quebec and California are fully harmonized. Since the Emission Allowances are only created in electronic form in the CITSS and currently only originate in either Québec or California, they are fully fungible. All transfers occur within the CITSS and the same transfer rules apply to all participants, whatever the jurisdiction.

It is our understanding that CRA and Finance consider Emission Allowances to be intangible personal property ("IPP") for purposes of the ETA. Subparagraph 142(1)(c)(i) of the ETA deems the place of supply of IPP to be in Canada where "the property may be used in whole or in part in Canada." Further, section 10.1 of Part V of Schedule VI to the ETA ("Section 10.1") zero-rates the supply of IPP to a non-resident that is not registered for GST/HST purposes ("NRNR") unless one of paragraphs (a)-(e) of Section 10.1 apply.

Questions

A. Please confirm Emission Allowances originating from outside of Canada are subject to GST/HST when sold between two non-residents that are both registered for GST/HST purposes?

B. Please confirm the sale of Emission Allowances to a NRNR is considered a zero-rated supply pursuant to Section 10.1.

C. Ontario will link its C&T program with California and Quebec on January 1, 2018. Will the sale of Emission Allowances will be subject to GST/ HST at 13% or will it be it be subject to GST/ HST based in the mailing address of the purchaser, pursuant to paragraph 8(b) in Division 2 of the New Harmonized Valued-Added Tax System Regulation, Part 1 (unless the supply is zero-rated pursuant to Section 10.1)?

D. Suppose a non-resident has a refinery in California for which it has compliance obligations under the C&T. It also has a natural gas business in Western Canada that requires it be registered for GST/HST purposes. The two distinct business units are separate divisions of the same legal entity but operate independently.

Will the non-resident registered for GST/HST purposes in Canada for commercial activity unrelated to the refinery business in California be required to charge or pay GST/HST on the supply of Emission Allowances to another GST/HST registrant?

E. Please provide an interpretation of Section 10.1's phrase "may be used in Canada" in the context of Emission Allowances that are traded under the C&T.

F. Please advise how, in a market-based economy, the fees are going to meet the requirements of the Carbon Backstop Model.

CRA Comments

A. As a general comment that is relevant for all the questions, it should be noted that the tax status of the supply of an emission credit/allowance may vary depending on the supplier. For example, supplies of an emission credit/allowance by a government or a public service body (for example, a municipality or a charity) may be exempt from the GST/HST.

Any questions relating to such a supply by a public service body or a government, should be directed to the Public Service Bodies and Governments Division.

Furthermore, as is always the case, without a thorough review of all the relevant facts and agreements, we are unable to provide a conclusive determination of the tax status of a particular supply.

With respect to the specific question, a supply of an Emission Allowance (whether originating in Canada or from outside Canada) made in Canada by a GST/HST registered supplier is considered to be a supply of intangible personal property (IPP) for purposes of the Excise Tax Act (ETA) and is generally subject to GST/HST at the appropriate rate unless it is exempt or zero-rated for GST/HST purposes.

Although section 10.1 of Part V of Schedule VI to the ETA is the relevant zero-rating provision for taxable supplies of IPP that are made in Canada to non-resident recipients, this provision specifically excludes from zero-rating any supplies of IPP that are made to non-resident recipients that are registered for GST/HST purposes.

B. Further to the response to Question A, if it is established based on the consideration of all relevant facts and agreements that a registered non-resident person is making a taxable supply in Canada of Emission Allowances to a non-registered non-resident, the supply would be zero-rated where the conditions of section 10.1 of Part V of Schedule VI are met.

C. If based on the consideration of all relevant facts and agreements, it is determined that a taxable (other than zero-rated) supply of Emission Allowances is made in Canada, where the conditions for paragraph 8(b) of Division 2 of Part 1 of the New Harmonized Value-Added Tax System Regulations are met, the place of supply and applicable rate of GST/HST would be determined based on the business address in Canada of the recipient of the supply that is obtained by the supplier in the ordinary course of its business. Where the supplier obtains more than one business address of the recipient in Canada in the ordinary course of its business, the business address of the recipient in Canada that is most closely connected with the supply will be determinative of the place of supply.

Where the supply is not determined to be made in a province under paragraph 8(b) because the supplier does not obtain a business address of the recipient in Canada in the ordinary course of its business, the rate of GST/HST applicable in respect of the supply will be based on the highest HST rate of the provinces in which the Emission Allowances can be used.

D. The response is the same as the question with respect to the question in Part A.

E. Section 10.1 of Part V of Schedule VI to the ETA includes the phrase "may only be used in Canada". The determination of where IPP may be used for purposes of section 10.1 is made in the same manner as for purposes of the place of supply rules. Generally, as indicated in GST/HST Technical Information Bulletin B-103, Harmonized Sales Tax – Place of supply rules for determining whether a supply is made in a province, the determination will be made taking into consideration the terms governing the use of the IPP.

F. Finance to respond.

5. New Entity Verification Process

CRA has a new process for New Entity Verification, where CRA agents will call the director listed on a registration form to verify the new entity's information and confirm that the director is aware of the registration request.

CRA will have access to the director's information listed on the applicable business number application and will be able to associate it to other information in its database, such as the director's personal phone number. CRA could thus call a director using its home phone number by matching the SIN of the director; this is a concern for directors of large corporations.

Questions

A. Would CRA consider not calling a director on their personal home number for New Entity Verifications?

B. What is CRA's New Entity Verification policy in situations where the director's personal information is not in CRA's database, for example, if the director is a non-resident of Canada?

CRA Comments

A. The Tax Centre procedures for Authorization Confirmation Calls (ACC) are clear about where to find the telephone number to be called: On the certification page provided, or in the BN database on the "owner" information screen. If telephone contact cannot be made using those numbers, the Tax Centres are instructed to issue an authorization confirmation letter to the signing authority, at the mailing address on file. We understand that some other workflows (ex. amalgamations) may also require telephone contact to complete files, however, ACC procedures allow for the file to be completed without a need to consult a taxpayers' personal tax identification information.

B. See above. A letter is mailed to the address on file.

6. Change to Partnership Rules

On September 8, 2017, Finance proposed to add subsection 272.1(8) to the ETA. The proposed subsection applies to the provision of any management or administrative service (as defined in subsection 123(1) of the ETA) to an "investment limited partnership" ("ILP") (as proposed to be

defined in subsection 123(1) of the ETA, and set out below) by a "general partner" ("GP") of the ILP.

Proposed Subsection 272.1(8) would deem the provision of any management or administrative service to an ILP by a GP not to be done by the GP as a member of the ILP. It would further deem the supply of the services to have been done other than in the course of the ILP's activities. The result would be that subsection 272.1(3), rather than subsection 273(1), of the ETA would apply and the GP would be considered to make a taxable supply to the ILP.

An ILP is a limited partnership whose primary purpose is to invest funds in property consisting primarily of financial instruments that meet the criteria set out under either paragraph (a) or (b) of the proposed definition to be added to subsection 123(1) of the ETA.

The condition in paragraph (a) of the definition would be met if the limited partnership is represented or promoted as a hedge fund, ILP, mutual fund, private equity fund, venture capital fund, or other similar collective investment vehicle.

The condition in paragraph (a) would also be met if the limited partnership forms part of an arrangement or structure that is represented or promoted as a hedge fund, ILP, mutual fund, private equity fund, venture capital fund, or similar collective investment vehicle. For example, this could include limited partnerships in tiered investment fund structures such as master-feeder funds or fund-of-funds.

The condition in paragraph (b) of the proposed definition would be met if listed financial institutions (as described in paragraph 149(1)(a) of the ETA) hold interests representing at least 50% of the total value of all the interests in the limited partnership. This structure is intended to include, for example, a limited partnership that is otherwise not included in paragraph (a) of the definition that is an investment vehicle for, or a funding medium for investing on behalf of, listed financial institutions.

Questions

A. Please confirm that partnership distributions would be included in the broad definition of "consideration." If so, how will the distribution be allocated between the deemed consideration payable for the services and other distributions not deemed to be consideration?

B. Please provide your position with respect to consideration payable prior to September 8, 2017.

C. Please confirm that the comments in the Policy Statement P-244 would still apply to situations not involving ILPs.

CRA Comments

A. Finance to respond.

B. Pursuant to the proposed new rules, where a general partner who is a member of an investment limited partnership (ILP) provides a management or administration service to the ILP, that service would be deemed not to be done by the general partner as a member of the ILP. In addition, the supply of that service would be deemed to have been

made otherwise than in the course of the ILP's activities. As a result, subsection 272.1(3) would apply to the management or administrative service. Where the service is acquired by the ILP other than for consumption, use or supply exclusively in the course of commercial activities of the ILP, the supply would be deemed to have been made for consideration that becomes due at the time the supply is made. In addition, the consideration would be deemed to be equal to the fair market value of the management or administrative service at the time the supply is made and as if the general partner and the ILP were dealing with each other at arm's length.

This proposed rule would apply in respect of the provision of a management or administrative service if any consideration for a supply of the service becomes due on or after September 8, 2017 or is paid on or after that day without having become due. The proposed rule would also apply where all of the consideration for a supply of the service became due or was paid before September 8, 2017, unless the general partner did not on or before that date charge, collect or remit any amount as or on account of tax in respect of the supply.

Therefore, if a general partner did not charge, collect or remit any GST/HST and all of the consideration for a supply of its management or administrative service to the ILP became due or was paid before September 8, 2017, the proposed new rules would not apply. In this case, where the general partner received a fixed fee (for example, a percentage of the net value of partnership assets or any payment that is not linked to the profits from the business of the partnership) for its

management or administrative service, it is the CRA's position that the general partner provided this service otherwise than in the course of the ILP's activities. As such, subsection 272.1(3) applies and the general manager is required to account for the GST/HST in respect of the supply.

C. Section 272.1 sets out the rules pertaining to the activities of partnerships. Subsection 272.1(1) provides that, for GST/HST purposes, anything done by a person as a member of a partnership is deemed to have been done by the partnership in the course of the partnership's activities and not to have been done by the person.

Based on Policy Statement P-244, Partnerships – Application of subsection 272.1(1) of the Excise Tax Act, the determination of whether anything done by a person as a member of a partnership is deemed to have been done by the partnership in the course of the partnership's activities and not to have been done by the person depends on the applicable provincial partnership law and the facts of the particular situation. As discussed in the policy statement, a number of factors must be considered. Factors to consider include, but are not limited to, the following:

- the terms of the partnership agreement;
- the nature of the action undertaken by the partner; and
- the partner's ordinary course of conduct.

The comments in P-244 continue to apply to partnerships in circumstances where proposed subsection 272.1(8) would not apply.

7. Partnership Versus Corporations (Finance Only)

8. Pension Plan Rebates (Finance Only)

9. Waivers

CRA's Registrant Bill of Rights states the following:

"You can expect us to provide you with complete, accurate, and timely information in plain language explaining the laws and policies that apply to your situation."

"Our enquiries agents have extensive training and reference tools that let them respond quickly and accurately to your questions and provide you with the highest quality of service."

"Service standards are the basis of our performance management system and represent our public commitment to the level of service you can expect from us under normal circumstances."

"We set targets for achieving each service standard based on operational realities and infrastructure, available resources, historical performance, degree of complexity of the work, and Canadians' expectations."

Numerous examples have been provided to TEI indicating that when waivers have been signed by the registrants, the motivation to complete rulings or audits may wane.

Question

Is there a "service standard" determining how long CRA can delay finalizing an assessment when a waiver has been signed by the registrant?

CRA Comments

The CRA strives to complete files without undue delay however the time an audit takes depends on a number of factors including whether the issues are highly technical, precedent and/or policy-setting. The Taxpayer Relief Provisions allow the CRA to respond to a registrant's circumstances where there has been a significant delay on a file due to CRA actions. A waiver with respect to a period for assessment does not contain a time limit although a registrant may revoke a waiver by filing Form GST146, Notice of Revocation of Waiver. A revocation becomes effective six months after the date it is filed.

10. Company Director Updates/Access and Maintain Company Information

Due to the challenging economic climate, directors are changing companies more than in the past and are working for competitor companies. In many cases, such directors still have direct access to their previous company's CRA accounts and confidential banking information. Companies are sending their updated list of directors to CRA; however, it appears that the updates are not being input into the CRA system in a timely manner or sometimes not at all.

Registrants need an effective process to protect their financial information. TEI acknowledges that CRA's resources are limited.

Questions

A. Would CRA consider providing a special access to the registrant's appointed "Delegation of Authority" person, to allow that person to make the appropriate changes to directors directly in CRA's systems?

B. Does CRA have any other recommendations or solutions?

CRA Comments

A. At the moment, the CRA system (RaC) has the functionality for a delegated authority (or any other representative who has been assigned the privilege to submit electronic business authorizations) to submit an 'owner' name change request along with substantiating documents as proof. These are then processed manually in the tax centres. We are also looking to display the current names of signing authorities in the secure portal so that they can be verified by owners and delegated authorities. Additionally, we are working to enhance the system to allow for requested name changes (with proof submitted) by delegated authorities as a separate transaction, i.e., without having to submit an authorization request.

B. The CRA fully understands the importance of updating this information in a timely manner. Our internal processing target for this is 10 business days from the time the request is received. Although there have been some delays, we expect all requests for "owner updates" to be processed within this standard by December 31, 2017 and we expect them to continue to be within standard moving forward.

11. Dedicated CRA Person for Large Case File Registrants

Please provide an update with respect to CRA's use of dedicated large case file managers.

CRA Comments

As a result of the discontinuance of combined GST/HST and Income Tax audits the CRA has moved towards having two points of contact for Large Businesses, one for income tax, and one for GST/HST. Where a GST/HST Large File Case Manager (LFCM) exists and is identified they are responsible for coordinating compliance issues for large business GST/HST registrants, along with the GST/HST issues for the various other affiliated entities associated with the particular large file case. In certain situations, where a GST/HST LFCM does not exist, the GST/HST team leader or section manager may act as the coordinator in addressing GST/HST compliance issues.

12. My Business Account Education

My Business Account ("MBA") is an excellent tool to allow a registrant to be independent from CRA for administrative purposes. CRA has been making upgrades on a regular basis to keep up with registrants' improvement requests. However, there are still many registrants and large and small business auditors who do not use MBA efficiently because they do not know how to use all the functions.

Questions

A. When will CRA be providing updated training to registrants and TSO staff? We believe this training would reduce the communication burden on CRA.

B. Has CRA considered expanding MBA to allow for online filing of GST/HST elections such as the section 156 and 167 elections, among others? If so, please provide details and the expected time frame.

CRA Comments

A. We are always looking for ways we can improve our program tools, like My Business Account, for our registrants. We continually work together with taxpayers to develop enhancements for the My Business Account portal.

We encourage you to look at the "What can I do on My Business Account?" section on our web page canada.ca/my-cra-business-account. It provides specific details for registrants and CRA staff alike to show what is possible on My Business Account. All program lines available in My Business Account have a drop down list to show all of the existing services for each. As My Business Account becomes more popular and becomes the preferred option for registrants and authorized representatives, we expect the lists of available services to expand.

B. Many of the services available on My Business Account were designed to be user friendly and mimic the information required when filing the information by paper or by other electronic services such as GST/HST NETFILE.

Digital services are front and centre at the CRA and we are always analyzing and evaluating potential new services. With respect to elections, we currently offer digital filing options for more than 95% (96.8%) of all GST/HST elections that are filed and captured. Prioritization and resource allocation exercises for initiatives to develop a digital service for remaining paper-only products are ongoing. When the volume is small, the cost-for-benefit tends to lower the prioritization. The 156 election is available for digital filing as of April 2015, and based on analysis of the remaining paper-filed elections, only the section 167 election would offer some benefit. However, it requires the signatures of both the recipient and supplier – dual authentication so to speak – which we cannot currently provide in the MyBA platform.

Each year a review is completed to see if more elections should be added to the MyBA platform and at this time no further consideration with respect to the addition of elections is being considered.

13. Update Regarding Changes to Joint Venture Election (Finance only)

14. Update Regarding Out-of-Pocket Costs Publication

At previous TEI-CRA liaison meetings, CRA indicated that it would be preparing a GST/HST publication with respect to the application of GST/HST to out-of-pocket costs incurred by a supplier that are reimbursed by its customers.

Question

Please provide an update regarding the status of CRA's out-of-pocket costs publication.

CRA Comments

To be discussed.

15. GST111 Form – Financial Institution GST/HST Annual Information Return (Finance Only)

16. GST111 Form – Financial Institution GST/HST Annual Information Return

TEI's members have had a variety of experiences relating to the filing of GST111 – Financial Institution GST/HST Annual Information Returns.

Example 1:

An entity filed the GST111 form for the last three years as required by section 273.2 of the ETA. The entity received a letter from CRA stating "We have received your GST111 Financial Institution GST/HST Annual Information Return for the reporting period from January 1, 2016 to December 31, 2016, but since the account is not registered to file a GST111 Financial Institution GST/HST Annual Information Return, we cannot process your return. If you want to register the account, please call…."

The entity called CRA and learned none of its GST111 forms from the last three years had been processed. The CRA agent requested the entity to re-send the three past years of GST111 forms if the entity wanted those returns be processed.

Example 2:

Another entity that filed the GST111 forms received a call from a CRA agent to confirm CRA received its GST111 form but wanted to confirm if it would like to be coded as "financial institution;" otherwise, CRA would reject its GST111 form.

Questions

A. Please comment on the above examples.

B. Please indicate what entities should do to help ensure the appropriate actions are taken.

CRA Comments

Without specific account information to review, we can only provide general information on why the CRA may be unable to process a return received from a registrant.

For various reasons, such as ensuring that the correct returns are sent to a registrant and are received from a registrant, the CRA's computer system has information on a registrant's type of business. Some of this information is provided to the CRA when the entity registers. For example, an entity is asked to indicate if it is a financial institution, a listed financial institution or a selected listed financial institution and if it is resident in Canada in Part A of Form RC1, which is the form used to request a business number and get registered for the GST/HST. Where an entity is a financial institution a specific code is assigned to the account. For example, there is a code to indicate that an entity is a de minimis financial institution or a listed

financial institution. Currently, there are several codes used for selected listed financial institution (SLFIs) to distinguish between the different filing requirements, for example an entity may be an SLFI for both GST/HST and QST purposes or only for GST/HST purposes. The assigned code is based on information received from the entity.

When the CRA receives an annual information return for a financial institution (such as Form GST111), the individual processing the form will determine whether the information provided on the type of financial institution completing the form is consistent with the information in the CRA's computer system. If the information is not consistent, a CRA officer will generally call the entity to obtain additional information in order to clarify whether the code currently in the CRA's computer system requires updating. If the CRA cannot obtain clarification from an individual who is authorized on the account to make a change on the account, a letter is generally sent to the registrant. However, where clarification is received from an authorized individual the code will be updated in the CRA's computer system.

It is very important that the code assigned to the entity in the CRA's computer system accurately reflects the type of financial institution. If an entity or its authorized representative would like to confirm how the entity is coded in the CRA's computer system, they can call business enquiries at 1-800-959-5525. If an entity would like to update CRA's information on the type of financial institution it is, a letter signed by an authorized person should be sent to the Prince Edward Island Tax Centre; the address is on the last page of Form GST111.

17. Qualifying Environmental Trusts (Finance Only)

18. Amended Returns

Hypothetical

- Two closely related companies (Registrant A and Registrant B) are registered for GST/HST purposes. Registrant A claims $4,000,000 of GST/HST under a return filed on April 30, 2013 with respect to the March 2013 period.

- For reasons unrelated to the claim of ITCs included in the March 2013 return, Registrant A amends its March 2013 return on August 1, 2016.

- As a result of this amended return, CRA now has four years from August 1, 2016 to audit Registrant A's amended return based on the rules found under section 298(1) of the ETA.

- An audit of Registrant A is initiated on May 1, 2017. On September 1, 2017, the auditor issues an assessment of $100,000 relating to ITCs claimed by Registrant A on the basis the recipient was Registrant B.

- However, because the denied ITCs relate to the March 2013 period, Registrant B is unable to claim the $100,000 of ITCs denied to Registrant A in the course of an audit.

Question

Would CRA consider an administrative position that would allow that other closely related registrants to claim the ITC beyond the four-year ITC limitation period?

We note that such administrative easement could be limited to situations where the denied ITC resulted only because CRA had an extended period to assess due to an amended return and because the closely related company was unable to claim the ITC due to the expired four-year ITC limitation period.

This approach would be very similar to section 225(4) of the ETA, where a recipient that is invoiced by a supplier for taxes not previously charged by the supplier within the normal four-year period may still be allowed to make such claim if the supplier's claim for unpaid taxes arises from an assessment of the supplier. Section 225(4) was enacted to ensure that a recipient charged for taxes outside the normal four-year period, as a result of CRA assessing the supplier, would be given the opportunity to claim back an ITC for the payment of such late taxes.

CRA Comments

The authority for making an adjustment to a registrant's net tax must explicitly or implicitly come from the ETA. The legislative requirements with respect to the time limits for claiming an ITC are clearly laid out in section 225 of the ETA. The legislation does not provide the Minister with the authority to extend the ITC limitation period. As such, we will not consider an administrative position as suggested above.

19. Agency and Elections

Hypothetical

A GST/HST registered company ("Aco") enters into an agency agreement with a non-registered, non-resident company ("Bco"), which then enters

into a second agency agreement with a registrant ("Cco") to bill on behalf of Aco; Cco would still be expected to charge taxes on behalf of Aco.

Aco is bound by the actions of the Bco under their agency agreement, which may include entering into the agreement with the Cco.

- Aco, a GST/HST registrant, retains the service of an agent (Bco) to advise Aco on how to increase sales in Canada.
- Bco is not registered for GST/HST purposes as it is a non-resident.
- Bco then enters into a billing agency with Cco to bill on behalf of Aco.
- The agency between Bco and Cco has been disclosed to Aco.
- The agency between Aco and Bco has been disclosed to Cco.
- Cco also operates a business for which it files its own GST/HST returns.
- Aco and Cco agree that the taxes collected on behalf of Aco should be remitted in Cco's monthly returns
- Aco and Cco file an election under section 177 of the ETA.
- Cco will now include the GST/HST it collects on behalf of Aco in its GST/HST return.

Question

Should Aco and Cco be filing an election under section 177 of the ETA even though no direct agency agreement exists between the two parties?

CRA Comments

Pursuant to subsection 177(1.1), a registrant agent and a principal may jointly elect to have the agent account for any GST/HST charged or collected by the agent in respect of most supplies made by the agent on the principal's behalf. In addition, a principal and a billing agent who is a registrant may generally elect under subsection 177(1.11) to have the billing agent account for the tax charged or collected by the billing agent in respect of a supply made by the principal. In both cases, GST506 may be completed by the principal and agent as evidence that an agency relationship exists between the parties. The principal and agent should each keep a copy of GST506 with their books and records, but the form is not required to be filed with the CRA.

Nothing prevents a principal and sub-agent, as in the case of Aco and Cco in the current scenario, from completing GST506. However, the parties would still need to establish, based on the facts of each case, including documentation establishing that a sub-agency relationship exists, whether such a relationship truly exists. GST506 provides evidence that the parties have agreed that a person other than a principal will collect and be accountable for GST/HST in respect of a supply, but there must still clearly be a principal-agent (or sub-agent) relationship in existence.

20. Section 232 - Credit Adjustments

GST/HST Memorandum Series Chapter 12 provides CRA's position on refunds, adjustments, or credits set out in section 232 of the ETA.

It is common for a recipient to request an adjustment following the issuance of an invoice. A literal reading of paragraph 8 of the memorandum would suggest that such request on the part of the recipient would be an "action" that would render inapplicable the various provisions found under section 232.

It is unclear as to what type of action on the part of the recipient CRA has in mind under this Memorandum.

Question

Given that section 232 does not contain such a restriction, please indicate what actions by a recipient would give rise to a refusal from CRA to accept a reduction in consideration.

CRA Comments

The position of the CRA is that for purposes of subsection 232(2) the reduction in consideration may be made for any reason but must not depend on any action undertaken by the recipient or any supply made by the recipient.

The determination of what constitutes an action would be made on a case by case basis. That being said, where a purchaser is required to buy product Y in order to receive a retroactive price adjustment on a previous purchase of product X would be an example of what may be considered

as an action and therefore not meet the requirements of subsection 232(2). Another example would be where the purchaser is required to make a supply of product X in order to receive the price adjustment on their purchase of product X. Additionally, acting on the promise of a reduction for prompt payment would be considered to be an action.

21. Section 156 Election

Since January 1, 2016, a registrant is required to update its section 156 election (electronically or in writing) whenever changes are required.

Where a registrant is part of a group that includes many closely related members (e.g., 30 members) and the registrant is entitled to file such election on behalf of all members, one election form can be used by listing all parties that are subject to this election. The online form then requires the registrant to indicate all the legal names of the parties making this election.

Where additional members are to be added to the existing election, a new election must be filed containing all names of the closely related members of the group. Likewise, where one existing member of the election is to be removed, a new election containing the name of the remaining members must be filed. A new election must be filed rather than an amendment for the particular additional member.

Question

Would CRA consider a process that would enable registrants to simply add or delete the name of a new closely related member?

CRA Comments

The simple answer is 'yes', and the CRA did consider a process that would enable registrants to simply add or delete the name of a new closely related member by allowing all of the members to make their elections on a single form. When filed, every combination of eligible corporations and eligible Canadian partnerships whose names appear on the election is considered to have made an election. If 5 names appear, there are 10 possible combinations; if 30 names appear, there are 435 possible combinations. When a new member is added, an original election is not amended, rather the legislation requires the new member to file an election with each of the other members; in this case, the CRA allows for the filing of a single form. An original effective date between other members remains in effect and a new effective date is in place for the elections that involve the new member. From a tax administration perspective, we chose to allow the filing of a single election form from which the CRA would internally generate all of the required combinations as opposed to the filing of single election forms by registrants for each possible combination.

Given that the election is between two parties and not a group election, it would be administratively difficult to process a new election that is adding or deleting a member by including (only) the single member on

the form. We will continue to review and explore new options for the future.

22. Recharging Production Taxes

Hypothetical #1

Production/excise taxes are imposed on a bulk producer of goods ("Bulkco"). These taxes must be charged to the contract packager ("Packco") that renders a packaging service to Bulkco. Bulkco makes no other charge for the bulk goods delivered to Packco, as Bulkco continues to hold title to the goods during and after packaging. Packco is entitled to recover the production taxes passed onto it by claiming a refund/deduction/credit on the returns it files for these same production taxes. If Bulkco did not pass on the cost of the production taxes incurred, double payment of production taxes on the goods would result because both Bulkco and Packco need to remit with the flow of goods. Both Bulkco and Packco are GST/HST registered and utilize only their Canadian production facilities (i.e. no international movements of goods are involved) in this operation.

Questions

A. Is the charge made by Bulkco to Packco for the production/excise taxes considered a supply on which GST/HST applies?

Hypothetical #2

Packco incurs production taxes on the bulk goods packaged for Bulkco. In accordance with the terms of the written agreement between Bulkco

and Packco for packaging services, Bulkco is required to pay Packco a fee for each unit of Bulkco's goods packaged. Under the services agreement, Bulkco is also liable to pay or reimburse Packco for any production taxes imposed on Packco arising from its packaging of Bulkco's goods. Note, Bulkco is not entitled to recover these production taxes.

B. Is the separate charge made by Packco to Bulkco in respect of the production taxes incurred, regarded as part of the consideration payable by Bulkco for the packaging service being provided by Packco and as such, subject to GST/HST?

CRA Comments

A. The facts provided in this hypothetical situation are unclear and therefore, based on the information provided, we cannot provide a specific response to the question. For example, taxes can only be imposed by a government through legislation. Therefore, it is unclear from the facts provided why a tax that is imposed on and payable by Bulkco must also be charged by Bulkco to Packco. Generally, excise taxes that are payable in respect of a supply are either payable by the person making the supply or are payable by the recipient of the supply and collectible by the supplier.

In general, where a person that pays a tax, duty or fee and chooses to pass on that cost in the price of a good or service charged to the customer, that cost will form part of the consideration for the supply to the customer. Further, section 154 of the ETA provides that, generally, federal and provincial taxes, duties, and fees payable by a recipient or payable

or collectible by a supplier in respect of a taxable supply of property or a service (or in respect of the production, importation, consumption, or use of a property or service), are included in the consideration for the taxable supply for purposes of calculating the GST/HST. However, it should be noted that this general rule does not apply to the GST/HST nor to certain provincial levies that are prescribed in regulation and are payable by the recipient and collectible by the supplier.

For further information, you can consult GST/HST Memorandum 3.5 – Application of GST/HST to Other Taxes, Duties and Fees at http://publications.gc.ca/collections/collection_2017/arc-cra/Rv3-2-3-5-2016-eng.pdf

The application of the GST/HST to a tax, duty or fee will depend on the facts of a particular situation and will require a review of the legislation which imposes the tax, duty or fee.

As indicated at the December 5, 2017 meeting, there is insufficient information on which to base an answer. As such, where the TEI member has a specific question, they could request a ruling from the Public Service Bodies and Governments Division of the Excise and GST/HST Rulings Directorate. This would require the submission of all relevant agreements between the producer and the packager, reference to the legislation that imposes the tax, duty or fee, and an explanation as to how that legislation applies to the submitter's fact situation.

B. Where production taxes are imposed on and are payable by Packco, those taxes are a cost of doing business for Packco. As with any input cost, Packco can choose whether or not to pass that cost on in the price

of its outputs. The facts provided indicate that pursuant to the terms of a written agreement between Bulkco and Packco for the packaging services, Packco and Bulkco have agreed that Bulkco will pay a per unit fee for each unit of goods packaged and, additionally, Bulkco will reimburse Packo for any related production taxes. In this scenario, the reimbursement of the production taxes would be further consideration that must be paid by Bulkco for the supply of the packaging service as it is a cost of doing business that Packco has passed on to Bulkco in the price it charges for its packaging services.

Further, for greater certainty, section 154 of the Excise Tax Act (ETA) provides that, in general, any tax, duty or fee payable by the recipient or payable or collectible by the supplier in respect of a taxable supply of property or a service (or in respect of the production, importation, consumption, or use of a property or service), is included in the consideration for the taxable supply for purposes of calculating the GST/HST. It should be noted that this general rule does not apply to the GST/HST nor to certain provincial levies that are prescribed in regulation and are payable by the recipient and collectible by the supplier. However, as this production tax is payable by the supplier and not the recipient, it would not be a prescribed tax. Therefore, pursuant to section 154 of the ETA, the reimbursed amount will form part of the consideration for the taxable supply of packaging services, and it will be subject to the GST/HST.

23. Draft GST/ HST Technical Information Bulletin B-103, Harmonized Sales Tax – Place of Supply Rules for Determining Whether a Supply is Made in a Province

Please provide an update regarding the status of the final version of Draft GST/ HST Technical Information Bulletin B-103, Harmonized Sales Tax – Place of Supply Rules for Determining Whether a Supply is Made in a Province.

CRA Comments

We are currently updating GST/HST Technical Information Bulletin B-103, Harmonized Sales Tax - Place of supply rules for determining whether a supply is made in a province and expect to release it next year.

24. Pre-Payment for Potential GST/HST Assessment

Hypothetical

- Following a GST/HST audit for the years from 2014 to 2016, a registrant is assessed for GST/HST over claimed;

- Most of the errors were due to incorrect manual input when processing payable invoices and sales invoices (e.g. incorrect selection of expense codes, jurisdictions, etc.);

- To minimize potential interest and penalties applicable on the next audit assessment for the future years, the registrant wants to make a "payment" for the potential GST/HST over-claimed during 2017;

- The registrant estimates GST/HST over-claimed during 2017 based on the yearly average amount assessed (i.e., the estimate is not related to specific transactions).

Questions

A. Can the registrant make an adjustment on its GST/HST return for the month of December 2017, by reducing its ITC?

B. If yes, could the "payment" also be used to reduce a future GST/HST assessment for GST/HST not collected?

C. Is there another way for the registrant to make a "payment" for the year 2017?

CRA Comments

A. Yes. Technically, you can make an adjustment and reduce the ITCs on a return. You can claim them on a later return for up to 4 years, but taking the ITCs from one period could result in a debt for that period, so this may not be the best option.

B. We are unclear if "payment" refers to a new payment made by the registrant or a credit on the registrant's account resulting from an adjustment to a previously filed return. The response provided to this question assumes that the "payment" is a new payment being made to satisfy the reduction in ITCs for December 2017 and the question relates to the registrant's options if that payment later becomes available following a subsequent adjustment by audit.

If all or a portion of a payment becomes available for refund following an adjustment to a GST/HST return, the registrant may request that the credit be applied to an existing balance due in another period, as a payment for net tax due for the current unassessed period, or to meet an instalment requirement for an unassessed period. The credit may not be transferred to another assessed period to be held for a potential future adjustment.

C. A GST/HST registrant has the option of making a payment (advance deposit) in order to minimize the risk associated with interest charges on future adjustments to their account. When making this type of payment, the registrant must clearly indicate that it is an advance deposit and provide the individual filing period for which the advance deposit is intended. Once applied to the registrant's account, the advance deposit cannot be transferred to a period other than the one originally identified unless there is an existing debit balance which the registrant would like to pay.

All advance deposits are subject to review by audit to make sure there is a risk of reassessment associated with the period(s) indicated by the registrant and that the amount on deposit is reasonable.

25. Collection and Enforcement Activities

A TEI member was recently informed by a CRA agent that it is not possible for CRA to release amounts that were automatically set-off – for example, reducing a GST/HST or FET refund to pay an income tax assessment, even if the assessment is under appeal and the taxpayer paid 50% of the tax

assessed under section 225.1(7) of the ITA. The CRA agent also indicated that there is a team at CRA reviewing the compensation issues.

Furthermore, several TEI members have experienced set-offs between their tax accounts that occurred on the same day the assessments were issued or on the day their GST/HST tax returns were filed.

Tax accounts set-offs by CRA increase taxpayers' administrative burdens and create important cash flow issues.

Questions

A. Please provide more information regarding current initiatives with respect to compensation between taxpayer's tax accounts.

B. Would CRA be interested in consulting with TEI to identify the issues and potential solutions to these issues?

CRA Comments

A. The CRA's accounting system has an automated process whereby refundable credits will automatically be applied to any outstanding debts within the same Business Number prior to issuing a disbursement to a taxpayer. This is an automated process that is initiated immediately following the assessment of a return or a rebate which results in either a debit or a credit posting to the account. When a debit is posted, this process is invoked to look for available credit to satisfy the debt. Similarly, when a credit is posted, this same process is invoked to look for any debts to be satisfied prior to issuing a disbursement to the taxpayer. This is a "real time" process, meaning that it takes place instantaneously, without

any user intervention. This process allows the Minister to set-off credit amounts automatically before paying a refund.

The process described above is how the Canada Revenue Agency administers subsection 296(3) and 296(3.1) of the Excise Tax Act which came into effect April 1, 2007. The explanation notes of subsections 296(3) and 296(3.1) of the Excise Tax Act clarify that amendments made to these provisions removed the person's ability to request that the Minister not apply an overpayment of net tax against other liabilities of the person.

For the specific scenario you have described, a taxpayer who meets the definition of a "large corporation" as per 225.1(7) of the Income Tax Act is required to pay 50% of the amount assessed, whether or not an objection or appeal has been filed in respect of that assessment.

However, if the taxpayer has filed a notice of objection, the CRA will not collect the remaining balance that is under dispute. (i.e. the amount in excess of the 50% mentioned) – as this remaining balance is deemed to be "non-collectible". Collection actions will not resume until after the day that is 90 days after the day on which a notice is sent to the taxpayer that the Minister has confirmed or varied the assessment (i.e. the Notice of Assessment detailing the Appeals reassessment). This is as per 225.1(2) of the Income Tax Act.

In the same way that collection action would not take place on an amount that is under dispute in excess of the 50% required by large corporations, the Agency has automated system functionality in place to prevent any refundable credits (including the GST/HST and FET refunds

mentioned) from being applied against the debt identified as being under dispute.

If any taxpayer, including those that meet the definition of a "large corporation" believes that an amount was applied against a balance that was not collectible during a period of time when the amount was identified as being under dispute, the taxpayer may send an enquiry to the CRA and we will review it. We review these enquiries on a case-by-case basis.

B. The Agency's processes as described are based upon legislative requirements. However, we recognize that in some instances the timing of events can impact the resulting transactions. If an error was made where an amount was applied against an amount that was identified as being under dispute, we will correct it.

The taxpayer may send an enquiry via our electronic service of MyBA (My Business Account) available on the CRA website; or he/she may contact our Business Enquiries agents at 1(800) 959-5525 who can create a case on the taxpayer's behalf for our accounting area to review the account.