TAX EXECUTIVES INSTITUTE, INC.

INCOME TAX QUESTIONS

Submitted to

CANADA REVENUE AGENCY

NOVEMBER 18, 2014

Tax Executives Institute (hereinafter "TEI") 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 (hereinafter "the CRA" or "the Agency") during the November 18, 2014, liaison meeting. If you have any questions about the agenda in advance of the meeting, please do not hesitate to call Paul T. Magrath, TEI's Vice President for Canadian Affairs, at 905.804.4930, or Grant L. Lee, Chair of the Institute's Canadian Income Tax Committee, at 604.641.2502.

A. Introduction

1. 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 new Assistant Commissioner to provide comments about his first months in the position, his thoughts on the vision for the future of the branch, and feedback on the role TEI can play in achieving that vision.

2. In addition, we understand that several CRA officials, including the Assistant Commissioner for Compliance Programs, met in early September with counterparts from HM Revenue & Customs in the United Kingdom to discuss and share experiences on efficient and effective tax administration and enforcement. TEI invites a summary of CRA's discussions with HMRC in respect of large business tax compliance, including whether (1) CRA is considering implementing a cooperative compliance program for large companies in Canada; (2) benchmarking exercises were conducted (or discussed) in respect of large file audit and issue resolution practices and procedures; and (3) any formal or informal joint initiatives between the respective tax authorities are under consideration or being implemented (or expanded) in respect of large file cases.

3. Finally, we invite the Director General of the International and Large Business Directorate to provide an update on the following:

   a. Recent organizational changes at CRA, especially in respect of the Aggressive Tax Planning and International and Large Business Compliance Directorates, and thoughts on how the changes will streamline audits and facilitate earlier, more expedient and effective issue resolution;

b. Priorities for ensuring large business compliance for the next three to five years and the role TEI may play in that vision; and

c. The bases upon which resources are allocated across the country, taking into account both specialist industry knowledge and technical capabilities.

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

1. *Electronic Filing and Interchange*

During prior liaison meetings, TEI and CRA have discussed the administrative and compliance efficiencies gained through electronic filing and interchange. TEI invites a status update on the following:

a. Electronic filing of Forms T1134 (*Information Return Relating to Controlled and Not-Controlled Foreign Affiliates*) and T106 (*Information Return of Non-Arm's Length Transactions with Non-Residents*).

b. Electronic filing of trust returns.

In its response to TEI's 2012 liaison meeting recommendation that electronic services should be made available to trusts, the CRA said that "the expansion of electronic services to other business lines was being reviewed to determine the most efficient way to extend [such] services to the administration of trust returns."

When does CRA anticipate that electronic filing might be available to mutual fund trusts?

c. Progress toward creation of electronic exchanges of information with the CRA that will facilitate an expedited audit process. (See question and answer 3(d) from the 2013 liaison meeting agenda.)

2. *Transferring Funds Between Tax Accounts*

During the 2012 liaison meetings, CRA was asked whether it would consider linking the tax accounts of associated companies so that tax payments could be transferred at the taxpayer's initiative. In its response, CRA stated:

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

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

a. Does the CRA maintain the view expressed in 2012?

b. If so, would the CRA consider removing large corporations in good standing from its automatic fund transfer program, or consider assigning an account manager or collections manager to work with the taxpayer so that CRA would not initiate and automatically transfer amounts among tax types, tax accounts, and tax years? Alternatively, could the Large File case manager assigned to a particular taxpayer be permitted to work with the collections staff to ensure "stall codes" are placed on accounts to prevent automatic collections or offsets are made prior to a formal reassessment being sent for processing?

CRA is responsible for promptly collecting taxes owing in order to minimize the risk of uncollectible tax debts. As a result, the CRA frequently applies funds on deposit in one tax account (such as GST/HST, payroll, or corporate income tax) automatically against the taxpayer's obligations under another tax account. In many cases, the automatic application of a payment from one tax account to another is made before the taxpayer is even aware of a deficiency or had an opportunity to make a payment on account. The automatic offset thus creates significant confusion and burdens for taxpayers as they attempt to reconcile their payments against their tax obligations. This is especially problematic for large taxpayers where the responsibility for payroll, GST/HST, and corporate income tax compliance rests with different departments or divisions.

We believe the risk of a large taxpayer's tax debt becoming uncollectible should be minimal given the frequency of their tax filing and payment obligations, including instalment requirements. As a result, CRA should consider eliminating automatic offsets among different tax accounts for larger taxpayers. If automatic transfers cannot be eliminated because of system issues, an alternative would be to assign a CRA account manager to work with the taxpayer to resolve payment issues in a timely manner. This would save CRA time and money since fewer payments would need to be processed and fewer corrections made for erroneous offsets. We invite CRA's response and comments.

3. *Regulation 102*

In the 2012 and the 2013 liaison meetings, the CRA was asked about revising its administration of Regulation 102 given the onerous administrative burden imposed upon non-resident employers and the employees who work in Canada for such short periods that no tax will ultimately be payable in Canada. CRA's 2012 response included the following:

> The CRA recognizes the administrative burden faced by non-resident employers and non-resident employees in meeting reporting and withholding obligations when the employees are exempt from Canadian income tax under a tax treaty.

> The CRA is currently working towards a more comprehensive policy that will address these issues beyond situations for conference participants.

CRA's 2013 response to a similar question included the following:

> The CRA will continue to evaluate potential changes to the waiver process for non-resident employees over the next year. At the present time, we cannot provide a more definitive response regarding particular suggestions. The CRA is continuing to pursue potential policies to simplify the Regulation 102 administration and waiver process.

We invite the CRA to provide an update on its progress in simplifying the administration and waiver process relating to Regulation 102 and share any ideas that it is considering (*e.g.*, pilot projects). Would the CRA consider establishing a working group with TEI and the Department of Finance to resolve these longstanding issues?

C. Administrative Matters

1. *Transfer Pricing Arbitration*

On June 9, 2014, the CRA released its 2014 Mutual Agreement Procedure Program Report (hereinafter the "MAP Report"). The report acknowledges the availability of the mandatory arbitration process in the Canada-U.S. tax treaty (the "Process"), but provides few details. Would the CRA (1) share its observations about its experiences with the Process and (2) share any statistics about the Process similar to the data compiled in the MAP Report for all mutual agreement cases (*i.e.*, specifically, cases in the system accepted for arbitration, completed, outstanding; arbitration cases by type and category; case completions by transfer-pricing methodology; case completions in favour of the Canadian or U.S. submission)?

2. *Pilot Project on Pre-ruling Consultations*

We invite the CRA to provide a summary of its preliminary results or observations with respect to the pilot project for "pre-ruling" consultations. In addition, will the CRA confirm whether the person(s) involved in the pre-ruling consultation will be the same person(s) handling the official ruling?

3. *International Tax Services Office – Assessment Issues*

Taxpayers are experiencing lengthy delays in resolving assessment issues with the International Tax Services Office (ITSO), in processing amendments to Regulation 105 and NR4 filings, and remediating errors in the processing of withholding tax filings.

a. Are any initiatives being considered by the CRA to improve the corporate tax assessment process in the ITSO?

b. Does the CRA monitor the processing time for accounts?

c. How are officers evaluated, especially in respect of the time required to process account issues?

4. *Authorized Representatives for Account Matters*

To resolve account matters with CRA, taxpayers are required to have authorizations on file for designated representatives. TEI members have reported experiencing difficulty with seeming systemic lags (or disconnects) between the authorizations that they have filed for taxpayers within their corporate group and the records displayed within CRA's system. For example, in some companies all members of a corporate group's tax team have been authorized as representatives and added to the "Group ID," which grants them online access (and access by telephone, fax, or mail) to administer all of the group's business accounts. On occasion, authorized individuals from the company have called to speak with the CRA but the CRA representative has been unable to confirm that the individual calling was authorized on the account. In another example, a collections officer recently called a member about an account where every current employee within the tax group held an authorization but the collections officer could only see an authorization for (1) the current VP of Taxation and (2) certain ex-employees the company had de-authorized years ago. Can the CRA advise whether there are any plans to align all its systems for authorizations? Would the CRA consider assigning a liaison officer to administer large file authorizations?

D. Audit Matters

1. *Risk-Based Audits*

In 2012 CRA introduced its risk-based audit approach by undertaking a detailed risk assessment of each large taxpayer in Canada. In connection with those risk assessments, the CRA held more than 175 face-to-face meetings with officials from large businesses. Anecdotal accounts of taxpayers' experiences with the risk-assessment process and the first post-risk assessment audit have varied widely. Now that large taxpayers have been informed of their risk rating, can the CRA provide comments on the implication these ratings have had on assessments and audits? Specifically, we invite CRA's comments on the following:

a. How has the CRA used the risk ratings? Have, and how have, the ratings changed the way CRA conducts audits?

b. Has the CRA realized efficiencies with respect to the allocation of audit resources? If so, what are the efficiencies?

c. Are there circumstances under which a company's risk rating may change from high to medium? If so, when might this occur?

d. Is the CRA planning any follow-up meetings with taxpayers in respect of their risk ratings within, say, two to three years?

2. *Head Office/Technical Referrals*

We commend the CRA for its efforts to make the audits of large file cases timelier and to close older tax years. This progress has allowed the CRA to conduct more efficient audits since the issues are more current and the documentation and personnel involved in transactions are more readily available to respond to CRA's queries. On the other hand, in some cases taxpayers report that issues have been referred to Head Office or for a technical review without the taxpayer's knowledge or an understanding of the CRA's concerns. In such cases, taxpayers have not been afforded an opportunity to include their comments or ensure that the facts are accurate and complete. As a result of these referrals, the Large File case manager has been unable to conclude these issues, resulting in a delay in the completion of the audit and, frequently, a request for waivers of the statute-barred period. Large File case managers have told taxpayers that they have no ability to estimate when responses will be received from Head Office because of the backlog. Indeed, in many cases, the referrals remain unassigned for weeks or months.

Does the policy on referrals to the Head Office include a mechanism to permit taxpayers to ensure the accuracy and completeness of the referral and include taxpayer comments on the referred matter? How have the recent organizational changes in the International and Large Business Directorate discussed during the Introduction affected the Head Office referral process?

3. *Alternative Dispute Resolution Processes*

As noted above, the CRA has made strides bringing audits of large corporations up to date and fine tuning the focus of its audits through an improved risk assessment process. This has significantly improved audit relationships with large corporations, reduced the administrative costs for both the CRA and taxpayers, and afforded large corporations greater tax certainty. Regrettably, one area that still consumes significant resources for the CRA and taxpayers is the resolution of issues where there are significant differences of opinion.

The CRA has a formal Appeals process and taxpayers ultimately have recourse to litigation in the courts, but these processes can be time consuming and expensive. TEI members have observed a reluctance to resolve issues at the audit level, which has led to the current backlog at Appeals and the courts. In recognition of the significant costs and time involved in litigating issues, other countries have instituted other dispute resolution processes administered by or complementary to administrative appeals processes. For example, the United Kingdom introduced its Litigation and Settlement Strategy (LSS) in 2007 and refreshed it in 2011.[1] Additional guidance for resolving disputes is also found in HMRC's "Code of Governance for Resolving Tax Disputes,"[2] as well as the "Practical Guidance for HMRC Staff on the use of

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[1] *See* http://www.hmrc.gov.uk/practitioners/lss.pdf

[2] *See* http://www.hmrc.gov.uk/adr/resolve-dispute.pdf

Alternative Dispute Resolution in Large or Complex Cases."[3] These documents provide insights and benchmarks for improving the Canadian tax administration process by introducing a "Made in Canada" alternative dispute resolution process modeled on the UK programs. Indeed, TEI member companies that have participated in the HMRC dispute resolution processes have found it efficient and effective. The Australian Taxation Office[4] and the U.S. Internal Revenue Service[5] have introduced similar programs and the links below provide details on their respective programs. Would the CRA consider creating an alternative dispute resolution process as has been implemented in other countries? TEI would welcome the opportunity to assist the CRA in developing such a process.

4. *Provincial Allocation Dispute Resolution Process*

At one time, the CRA employed a formal process — the Tax Re-Allocation Committee (TRAC) — for resolving provincial allocation disputes. With the federal government's assumption of the administration and enforcement of Ontario taxes, there seem to be fewer interprovincial allocation disputes, but when issues arise they often require an extensive period of time to resolve. In the interim, taxpayers are forced to pay the full amount of a disputed tax liability to more than one province. We invite the CRA to provide an update on the provincial allocation dispute resolution process and whether there is any opportunity for taxpayers to make representations with respect thereto, thereby improving and expediting the time for resolution of these disputes.

By way of example, a TEI member recently volunteered that an error had been made in its provincial allocation and provided revised calculations to the affected provinces. The non-agreeing province (Quebec) quickly reassessed the additional income but the agreeing province (Ontario) has been reluctant to reassess the reduction in its income that will be necessary to afford the taxpayer relief. As a result, the taxpayer has effectively been subject to double tax on the reallocated income for a substantial period. What recourse would the CRA recommend in these circumstances?

5. *Information Requests from Foreign Tax Authorities*

What is the CRA's policy with respect to CRA auditors issuing information requests to foreign tax authorities in respect of Canadian tax audits? What steps should be taken by CRA auditors prior to issuing requests for information from foreign tax authorities? When is it appropriate for auditors to request information through the Joint International Tax Shelter Information Centre (JITSIC) rather than issue a formal treaty-based request for information?

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[3] *See* http://www.hmrc.gov.uk/practitioners/adr-guidance-final.pdf

[4] *See* https://www.ato.gov.au/About-ATO/About-us/In-detail/Key-documents/ATO-plain-English-guide-to-alternative-dispute-resolution/?page=1#ADR_processes

[5] *See* http://www.irs.gov/Individuals/Alternative-Dispute-Resolution

E. Technical Matters

1. *Statute of Limitations: Loss Years*

In a year where a taxpayer has section 3 income, the CRA is obliged to make an initial assessment "with all due dispatch." The government's ability to reassess (absent deliberate or negligent misrepresentation by the taxpayer) expires within specified periods following the initial assessment. The same rules apply for a year when a taxpayer has a non-capital loss or a net capital loss, but the rules do not have the same effect because losses carry forward and their quantum remains open to adjustment until the year in which the losses are used or become statute barred.

Subsection 152(1.1) of the Act affords a process for fixing the quantum of a loss, but traditionally this process has not been engaged until after an audit. The process can begin only after the CRA has "ascertained" that the loss differs from the amount reported by the taxpayer. That can be a long time and the losses may be relevant for 20 or more years after the year the loss is incurred, thereby creating substantial uncertainty for taxpayers about their tax position and subjecting taxpayers to a burdensome requirement to maintain records of the year of the loss until the loss amount is "ascertained."

In 2013, TEI recommended that the Department of Finance consider an amendment to the Act that would require the CRA to make initial determinations of losses for a taxation year at the same time and in the same manner as the initial determination of income for that year. The response, captured in minutes of the meeting prepared by TEI members and subsequently reviewed by Finance, was, as follows:

> Finance would support an interpretation of subsection 152(1.1) that allowed a taxpayer to request that the amount of a loss be determined when the taxpayer files its return. If this interpretation is correct, Finance sees no need for an amendment. If the provision does not allow this, it may be worth considering an amendment.

Is the CRA prepared to issue a determination of loss to a taxpayer who requests one upon the filing of its return?

2. *Capital Cost Allowance (CCA) Claimed under Paragraph 20(1)(a)*

Under paragraph 20(1)(a) of the Act, a taxpayer has a statutory right to a deduction in respect of the capital cost of depreciable property. The taxpayer may also claim less than the maximum allowable and recover greater amounts of undepreciated capital costs in future years. Information Circular 84-1 (July 9, 1984) describes the facts and circumstances under which a taxpayer's written request to revise the capital cost allowance (CCA) for previous taxation years will be granted. Generally, revisions to previously claimed CCA amounts can be made as long as there is no change to the tax assessed or payable for the year of the revised claim or for any other year for which a return has already been filed. In addition, requests for revisions of CCA in a year that was assessable to tax are allowed as long as the time for filing a notice of objection in

respect of that year has not expired. There are some exceptions to this timeline, which include property that was subject to "certification" for inclusion in another class providing for a faster write-off (the taxpayer may then make revised claims for additional CCA for all prior taxation years affected that are not statute barred to reassessment). Requests for revisions of CCA in a year where no tax was payable are allowed except where the Minister has issued a loss determination (unless the taxpayer makes the request within 90 days from the day of the mailing of the notice of determination for that year).

Some taxpayers have reported being denied requests for revisions of previous CCA claims on the basis of attempting to engage in "retroactive tax planning."

a. Are the guidelines outlined in IC 84-1 still valid or has the CRA changed its practices?

b. Would the CRA's practice differ from the practices outlined in the IC if a request for revision of CCA were made subsequent to an acquisition of control of the taxpayer and the adjustment related to the time before the acquisition of control?

3. *Bond Repayments – Non-Financial Institutions*

Many Canadian taxpayers have issued bonds, debentures and similar obligations. Many of the instruments bear interest at rates higher than currently prevailing market rates. Hence, these companies are evaluating alternatives to refinance or repay their higher interest rate debts to lock in the advantage of the current low interest rate environment and reduce the overall costs of debt.

In many cases, the repayment of a higher rate obligation prior to maturity entails the payment of a penalty, bonus, or premium over the face amount that represents compensation for the interest-rate spread between the rate on the obligation and the current market interest rates. In this context, when bonds are purchased in the open market by the issuing company the price will exceed the greater of the principal amount of the obligation and the amount for which it was issued by the taxpayer. By virtue of paragraph 39(3)(b) of the Act, the excess amount (assuming the transaction is not an income transaction under the general rules for distinguishing income from a capital gain) would generally be deemed to be a capital loss of the taxpayer for the taxation year from the disposition of a capital property. *See, e.g.*, Technical Interpretation 2000-0036825 (September 13, 2000).

If the manner of repayment is not considered a purchase in the open market by the issuing company in the manner in which open market purchases are normally made by the general public, subsection 39(3) should not apply. Rather, subsection 18(9.1) of the Act may apply in respect of a penalty or bonus amount as described in paragraph 18(9.1)(d). Where all the conditions in subsection 18(9.1) are satisfied, the penalty or bonus amount may be deducted as interest in accordance with that subsection.

There are a number of alternative methods companies can use to facilitate the repayment of debt obligations. Many bonds do not trade publicly on a stock exchange and instead trade off-market or "over-the-counter." In evaluating the potential application of subsection 39(3) to bond

repurchase transactions it is not always clear what constitutes a "purchase in the open market in a normal manner by any member of the public." Accordingly, we request that the Agency provide its views on whether the bond buyback or repurchase transactions noted below are within (or outside) the purview of subsection 39(3) and indicate whether each constitutes an open market re-purchase:

a. A debt tender offer where a company makes a public offer to its bondholders to repurchase a predetermined number of bonds at a specified price.

b. In some cases, certain investors will own a significant amount of a particular issuer's bonds. Consider the case where a bond issuer enters into a transaction directly with one or more selected bondholders and agrees to repurchase all or a portion of the issuer's bonds held by the selected investor-holder(s).

c. Some bonds are callable, with the issuer having a right under certain conditions to redeem the bond prior to its maturity date. Consider an example where an issuer has issued callable bonds and subsequently exercises the call to force the redemption of the bonds.

4. *Refunds for Dissolved Corporations*

Frequently internal corporate reorganizations involve the winding-up of corporate subsidiaries in order to simplify corporate structures or eliminate redundant or dormant entities. After dissolution, these corporations may have either tax owing or be entitled to a tax refund.

Where a corporation has been formally dissolved and has an "overpayment," the CRA has in some instances refused to issue a refund of the overpayment on the basis that the corporation no longer exists. On the other hand, where a dissolved corporation has a balance of tax owing, we understand the Agency assesses and pursues collection of the tax from the parent corporation that received the dissolved corporation's property. (The claims against the parent presumably are pursuant to subsections 159(1) and (3)). Hence, there is seemingly inconsistent treatment of groups of corporate taxpayers depending on whether there is a refund or balance due for the dissolved corporation. We believe this inconsistency should be addressed.

We note that the formal dissolution of a subsidiary wholly owned corporation is typically preceded by a distribution of all of the property, rights, and interests of any kind to, and an assumption of all of its liabilities and obligations of any kind by, its parent. In the context of a corporate wind-up, would the Agency accept a subsidiary's assignment of its right to a refund of tax to its parent (*i.e.*, by issuing any refund to its parent)? Alternatively, would the Agency consider refunding an overpayment in respect of a dissolved subsidiary pursuant to paragraph 164(1)(a) of the Act?

5. *Imaging and Electronic Records*

In Technical Interpretation 2014-0526121E5 (July 17, 2014), CRA expressed the view that subsection 230(1) of the Act does not require taxpayers to keep their books and records in

paper format. Specifically, the statutory requirement to maintain books and records can be satisfied with electronic records (or images) to the extent that the content and quality of the electronic image is sufficient to enable the taxes payable to be determined. The interpretation also states that it is the taxpayer's responsibility "to select suitable electronic imaging requirements," citing Information Circular IC 05-1R1 – *Electronic Record Keeping* (June 25, 2010).

IC05-1R1 includes the following requirements:

- Paragraph 9 states that records must be located in Canada and clarifies that records kept outside Canada (*e.g.*, on a server) and accessed electronically from within Canada are not considered records maintained "in Canada." As a result, authorization from the Minister is required to maintain the electronic images and files on servers outside of Canada.

- Paragraph 26 states that "Imaging and microfilm (including microfiche) reproductions of books of original entry and source documents have to be produced, controlled, and maintained according to the latest national standard of Canada, as outlined in the publication called *Microfilm and Electronic Images as Documentary Evidence* (CAN/CGSB-72.11-93)."

- Paragraph 27 summarizes additional requirements for an acceptable imaging process as outlined in the national standards.

Since the issuance of the national standards and IC05-1R1 there have been significant advances in technology (*e.g.*, cloud computing) that have increased taxpayers' ability to convert paper documents to electronic images and minimize administrative and storage costs.

a. What has CRA's experience and involvement been in evaluating taxpayers' imaging processes? Is such an evaluation required before the CRA will authorize the destruction of the paper source documents that have been converted into electronic images?

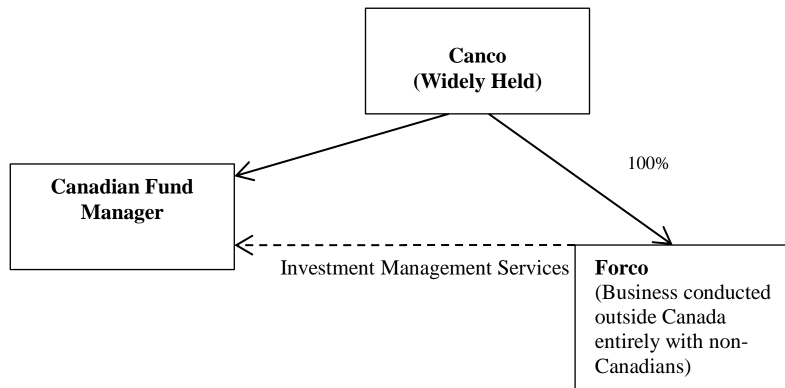
b. With the advances in technology, is the CRA participating in any initiatives to update the national electronic imaging standards and the related requirements outlined in the information circular?

c. In view of the easily accessible nature of electronic records through the internet — and in consideration of the decision in the Federal Court of Appeals decision in *eBay Canada Ltd. V. M.N.R.* [2008 F.C.A. 348; 2008 D.T.C. 6728] — would the CRA consider eliminating the requirement that electronic records be maintained on a server located in Canada? Eliminating this requirement would obviate taxpayers' administrative burdens of securing the Minister's approval for records kept outside of Canada and minimize the corresponding burden imposed on CRA to review taxpayers' requests and processes.

6. *Non-Resident Carrying on Business in Canada*

Where a non-resident engages a Canadian investment manager, the activities of the investment manager may cause the non-resident to be carrying on business in Canada for Canadian tax purposes. Under subsection 115.2(2), where certain conditions are met, the non-resident will not be considered to be carrying on business in Canada solely because of the activities of its Canadian investment manager. For purposes of discussion, assume that the management of a foreign company (Forco) wishes to engage a Canadian-resident corporation (CSP) to provide Forco with "designated investment services." (All quoted terms are as defined in subsection 115.2(1)). CSP's provision of these services to Forco could cause Forco to be carrying on business in Canada unless the exemption in subsection 115.2(2) is available.

The diagram below illustrates the relationships and the issue is whether the issuance of shares by Forco, *from its treasury*, to a Canadian resident precludes Forco from claiming the benefit of the safe harbor rule in subsection 115.2(2).



In responding to the questions and comments below, assume that:

(i) Forco was created more than a year ago;
(ii) 100 percent of Forco's shares were issued by Forco to, and continue to be owned by, a company resident in Canada (Canco);
(iii) Canco is affiliated with CSP;
(iv) Canco is a "designated entity" in respect of CSP;
(v) Forco has not, directly or through its agents, directed promotion of investments in Forco principally at Canadian investors; and
(vi) Forco has not, directly or through its agents, filed any document with a public authority in Canada to permit the distribution of interests in Forco to persons resident in Canada.

Would the CRA agree that by issuing shares to Canco from treasury Forco would not be considered to have "sold an investment in itself," as the phrase is used in clause 115.2(2)(b)(i)(B)? Does the mere issuance by Forco of treasury shares to a Canadian parent preclude the availability of the safe harbor even though Forco does not offer securities for sale to Canadians in Canada? We invite the CRA's comments.

7. *Voluntary Disclosures Program*

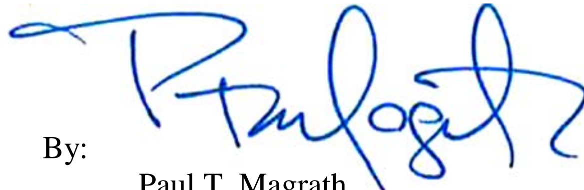
In paragraph 19 of Information Circular 001R4 *Voluntary Disclosures Program* (March 21, 2014), the CRA lists examples of circumstances that would not be considered for relief under the VDP, including "income tax returns with *no taxes owing* or with *refunds expected*; these would be handled under the normal processing procedures." For a taxpayer with a transfer-pricing related disclosure, there is potential for a transfer-pricing penalty even though no taxes may be due. Would the CRA consider affording relief under the VDP program for such a disclosure?

F. Conclusion

Tax Executives Institute appreciates this opportunity to present its comments and questions. We look forward to discussing our views with you during our November 18, 2014, liaison meeting.

Respectfully submitted,

Tax Executives Institute, Inc.



By:

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