TAX EXECUTIVES INSTITUTE, INC.

INCOME TAX QUESTIONS

Submitted to

CANADA REVENUE AGENCY

DECEMBER 7, 2010

Tax Executives Institute welcomes the opportunity to present the following comments and questions on income tax issues, which will be discussed with representatives of the Canada Revenue Agency (hereafter "CRA" or "the Agency") during the December 7, 2010, liaison meeting. If you have any questions about the agenda in advance of the meeting, please do not hesitate to call Rodney C. Bergen, TEI's Vice President for Canadian Affairs, at 604.488.5231 or, Carmine Arcari, Chair of the Institute's Canadian Income Tax Committee, at 416.955.7972.

1. CRA Audit Approach — Tax Governance of Large Corporations

The CRA, along with tax authorities from other countries, has been working through the OECD's Forum on Tax Administration to develop and share best practices in tax administration and audits. One initiative is to develop an "enhanced relationship" with taxpayers. As part of the enhanced relationship, CRA is implementing a risk-based audit approach in which a large corporate taxpayer's compliance is graded as low, medium, or high risk. The grade is based on CRA's evaluation of the company's tax filing and audit history as well as its tax governance structure. The scope and amount of time to be spent on an audit is then based on CRA's risk evaluation.

a. Would the Agency elaborate on the specific factors used in the risk-based audit approach? Also, how is the approach being implemented? Is it being phased-in in select Tax Services Offices (TSOs) or is it being implemented contemporaneously across all TSOs, corporate taxpayers, and taxation years?

b. Please comment on when and how the risk evaluation is conducted, by whom, and whether and how CRA takes account of the taxpayer's input and views during the evaluation.

c. Will taxpayers be informed of the compliance risk grade assigned by CRA?

d. Will CRA provide feedback to or otherwise work with taxpayers to identify necessary governance changes or compliance processes that must be implemented or improved in order to lower their risk-grade profile?

e. Finally, how does the risk-based audit approach affect CRA's decision to engage in a real-time audit for a particular taxpayer? More generally, are there collateral administrative or policy consequences arising from the risk-based audit approach or the grade assigned to a taxpayer?

2. Allocation and Management of Audit Files — Organizational Changes?

Members report that CRA has seemingly implemented a new practice whereby audit teams across the country may initiate an audit of a taxpayer even though it is part of a corporate group that is subject to audit as a Large File case. Where this occurs, the "new" auditors are unfamiliar with the files, companies, or businesses they seek to examine and consequently begin the audits with voluminous requests for data — data that (i) the Large File audit team are already familiar with and (ii) tax department personnel must expend considerable time retrieving (or refreshing) and then organizing and delivering to the new auditors.

Where taxpayers have asked their Large File Case Managers about the inquiries from the "other" audit team, they have been told that if the particular file is not under active audit by the Large File audit team, the Large File Case Manager cannot intercede and the taxpayer should treat it as a separate audit and respond accordingly. Since Large File Case Managers spend considerable time assessing compliance risk, planning audits, and working closely with their corporate tax department counterparts to manage calendars and resources, the practice of permitting other audit teams to initiate separate audits undermines audit efficiency for both CRA and the affected taxpayers. Indeed, the inquiries from the other CRA audit team diminish the time and resources available for the taxpayer to respond to the Large File audit team, which presumably is assigned to review the higher risk files, entities, and transactions.

TEI recommends that the practice of "file sharing" be discontinued for Large File cases under full-time, continuing audit. We believe this would be beneficial for both CRA and taxpayers. We invite CRA's comments.

3. Audit Reassessments

Currently, audit adjustments are processed independently by various specialty audit teams, including international, tax avoidance, scientific research & experimental development (SR&ED), *etc*. TEI believes that the administrative time for both CRA and taxpayers can be reduced — and the overall quality of audits improved — by centralizing reassessment authority and case control with the Large File Case Manager. Would CRA consider having the Large File Case Manager consolidate and approve all adjustments prior to a tax return's being reassessed?

More generally, would CRA please enumerate the responsibilities and role of the Large File Case Manager in terms of exercising control over their cases?

4. Technical Interpretation Process

We invite a discussion of the process for referring technical questions from a TSO to Ottawa Head Office during the course of a taxpayer's audit.

a. What process does CRA currently employ to ensure that the taxpayer's facts and legal position are properly reflected in the auditor's technical interpretation request?

b. To ensure that the taxpayer agrees with the description of the facts and legal positions in the technical interpretation request, would CRA consider providing the taxpayer with CRA's summary of the taxpayer's position as well as an opportunity to comment on it prior to its submission to Ottawa?

c. To ensure a complete and well-documented technical interpretation request TEI recommends that the taxpayer also be permitted to comment on the TSO's position in respect of the technical interpretation. We invite CRA's reaction to this proposal.

d. Finally, for the sake of transparency, TEI recommends that the taxpayer be provided with a copy of the final technical interpretation request that is submitted to the Ottawa Head Office. We invite CRA's comments.

5. Miscellaneous Administrative Matters

In order to improve administrative efficiency, TEI invites a discussion of the following:

a. *Online Tax Payments*

Members report that CRA permits financial institutions to accept online tax payments for up to two preceding taxation years. Taxpayers wishing to make payments for earlier taxation years must either issue manual cheques or make an on-line deposit for the current tax year and then ask CRA to transfer the payment to an earlier tax period. This policy seemingly causes unnecessary complications and duplication of effort for both taxpayers and CRA. Would CRA consider accepting on-line payments in respect of any open tax year?

b. *Statements of Interim Payments — Transfers of Payments between Accounts*

Large corporate taxpayers have a significant amount of activity in their tax payment accounts. Where CRA initiates transfers between tax accounts without the taxpayer's knowledge, the account reconciliation can be extremely challenging. Indeed, taxpayer personnel frequently must contact CRA to obtain an explanation of the transfers in order to understand the nature of the account activity. Moreover, in 2009 CRA reduced the level of detailed information on monthly "Statements of Interim Payments." Prior to the change, the statement identified the specific parties in a related corporate group affected by transfers between tax accounts. Now, the only information provided is the amount of the transfer in a transaction. For additional information on the nature of and reason for the transfer, as well as the identity of the parties, the taxpayer must contact CRA.

1. Would CRA consider revising its statements to provide more detailed information electronically so that taxpayers will not have to contact CRA personnel for an explanation of every account transfer?

2. More broadly, would CRA be willing to eliminate systemic transfers between tax accounts, especially for large corporate taxpayers that do not pose a significant credit risk?

c. *Partnership Returns — Acknowledgment of Receipt*

When a partnership files a return there is no acknowledgement that CRA received or processed the return. In addition, unlike corporate tax returns, no notice of assessment is ever issued. Does CRA keep a partnership return filing log that taxpayers could check to confirm that the returns have been received?

d. *Reporting for Foreign Affiliates and Non-Arm's Length Transactions with Non-Resident Corporations*

CRA auditors frequently request that taxpayers provide paper copies of returns and statements filed electronically, especially Forms T1134A (*Information Return Relating to Foreign Affiliates that Are Not Controlled Foreign Affiliates*), T1134B (*Information Return Relating to Controlled Foreign Affiliates*) and T106 (*Information Return of Non-Arm's Length Transactions with Non-Residents*). When making the requests, the auditors frequently assert that it is easier and more expedient to obtain the information from taxpayers than from internal CRA sources. TEI invites a discussion of how these returns and statements are indexed, analyzed, archived, and distributed to auditors for use during audits. The promised efficiency of electronic filing is undermined if taxpayers are required to maintain and provide information to CRA auditors in both electronic and paper formats.

e. *Form T2200 — Declaration of Conditions of Employment*

Subparagraph 8(13)(a)(i) of the *Income Tax Act, Canada* (hereafter "the Act") states that, in order to obtain a deduction with respect to a work space, the work space must be "the place where the individual principally performs the duties of the office or employment." Question 10 of current Form T2200 (*Declaration of Conditions of Employment*) requests information on the percentage of the "workday" that an employee works at his/her home office. (The previous version of the form did not request that information.) The reference to "workday" on the Form is undefined and implies that the employee must work principally at home for not less than 50 percent of each work day in order to be able to deduct home office expenses. Since the reporting period for individuals is a calendar year, we believe that home office expenses should be deductible if an employee is required to maintain a home office and uses the home office for not less than 50 percent of his or her work time during the tax year regardless of whether that office is used *daily*. Thus, for example, an employee should be able to qualify for a home office expense deduction where he/she works in that office more than two-and-a-half days per week or two to three weeks per month on average. Moreover, employee travel on behalf of an employer should not count against the employee in satisfying the test. Would CRA confirm

that employees are *not* required to test whether they have used the home office for not less than 50 percent of *every* work day during a tax year? If so, would CRA modify question 10 of Form T2200?

6. Transfer Pricing

a. *Mandatory Arbitration Process*

We understand that the competent authorities for Canada and the United States are developing procedures to implement the mandatory arbitration provision in the Fifth Protocol of the Income Tax Convention between Canada and the United States. When does CRA anticipate finalizing the procedures? Will requests for Advance Pricing Agreements (APAs) be eligible for mandatory arbitration if CRA and the Internal Revenue Service (IRS) are unable to reach agreement about the terms of an APA?

In addition, over the past several years, the number of U.S.-related cases referred to competent authority has grown substantially and the length of time required to resolve cases has also seemingly lengthened. Would CRA provide an update on the number of requests for competent authority relief and APAs (with respect to the United States) as well as the length of time the cases have been pending?

b. *Transfer Pricing Safe Harbours*

Both the IRS and CRA have increased the staff devoted to the examination of transfer pricing issues. Even though both countries subscribe to the arm's length principle, the application of that principle to taxpayers' facts and circumstances is subject to considerable uncertainty and inconsistency. Since taxpayers face substantial tax burdens in both jurisdictions, taxpayer compliance costs would be eased by implementing safe-harbour approaches to transfer pricing. As an example, the U.S. has established a so-called service cost method that requires either no or a very low markup on certain routine services. Would CRA consider working with the IRS to agree upon a unified approach to transfer pricing for transactions between Canada and the United States for management fees encompassing routine services?

7. Functional Currency Reporting Rules

Under paragraph 261(7)(g) of the Act, a taxpayer is required to convert its paid-up capital (PUC) from the Canadian dollar amount to the elected functional foreign currency as of the last day of the taxpayer's last tax year that it uses Canadian currency (the "Conversion date") for tax reporting. If the taxpayer subsequently redeems some or all of its shares (on the "Redemption Date"), is PUC determined in Canadian or the foreign currency for purposes of subsection 84(3)? If PUC is determined in Canadian currency for subsection 84(3), and the Canadian currency has decreased (increased) in value relative to the foreign currency between the Conversion Date and the Redemption Date, does the taxpayer realize and recognize a taxable gain (loss) on the foreign exchange fluctuation?

8. Private Health Services Plan (PHSP)

CRA Interpretation (external 2005-0126211E5) — *Private health services plan — benefit allocation* (November 24, 2005) — states that:

> A plan that allows a participating employee to allocate a *nominal* amount to a particular component of a plan in a year merely to allow the carry forward of excess expenses into another plan year would not be considered a PHSP. We cannot envisage how such a plan contains the requisite element of insurance since it has little or no risk. (Emphasis added.)

We have the following questions about the interpretation:

a. What amount does CRA consider to be "nominal" for purposes of a PHSP?

b. The interpretation addresses a plan that permitted an allocation between various medical benefits within the plan (*e.g.*, dental expenses vs. drugs). Would CRA's response have been different if the plan did not distinguish between qualifying medical expenses?

9. Regulation 105 — Timing of Withholding Tax Credit for Non-Residents

When non-residents provide services in Canada to residents of Canada, Regulation 105 (hereafter "Reg 105") requires service recipients to withhold and remit 15 percent of any payment. The amount withheld by the payer is considered to be a tax remitted by the non-resident that the non-resident can claim as a credit against its liability (or obtain as a refund) on a tax return filed in Canada.

When the non-resident performs services in Canada in one taxation year, the services may not be billed to the Canadian customer until the following year. Even where the Canadian customer is billed in the year services are performed, the cash payment may not be made until the following year. In either case, the taxes are withheld on the date of payment. Income earned from a business or property for the year, however, is determined under section 9 of the Act and companies using GAAP reporting must accrue the income and calculate the tax payable based on the amounts earned in the year even for payments received in the following year.

Under CRA's interpretation of Reg 105, the tax withheld by the Canadian resident customer can only be credited to the non-resident service provider in the taxation year in which the amount is remitted to CRA. As a result, a non-resident may be required to pay tax on the income earned in Canada for a particular year but will be unable to claim a credit for the withheld tax that relates directly to that taxable income. The non-resident can file a claim for a refund in the subsequent year, but the policy results in a non-interest bearing loan to the government for a year or more for the amount of the non-credited withholding.

Would CRA consider revising its position with respect to the timing of the credit for taxes paid on behalf of a third-party non-resident under Reg 105 where it can be demonstrated

that the tax withheld relates to a specific taxation year regardless of the year in which it is withheld? Would CRA consider revising its position where the payment is made to a non-resident related party?

10. IC 87-R2 *International Transfer Pricing*

Paragraph 188 of IC87-R2 *International Transfer Pricing* (September 27, 1999) states that "[i]n preparing documentation, taxpayers should attempt to weigh the significance of the transactions in terms of their business with the additional administrative costs required to prepare or obtain such documentation. The obligation to find comparable transactions for applying the arm's length principle is not an absolute one. The cost and likelihood of finding such comparables relative to the significance of the transactions to the taxpayer should be taken into account." TEI believes it would be helpful for CRA to elaborate on the statement in the information circular and provide examples in respect of its application. We invite CRA's response.

11. Article V, Section 9, Canada-U.S. Tax Treaty

Under the new Permanent Establishment (PE) provision in Article V, section 9 of the Canada-U.S. Tax Treaty, the existence of a PE can be triggered retroactively after a tax year-end, which can result in inadvertent noncompliance. Specifically, under subparagraph 9(b), where an enterprise's services are provided in a host State for an aggregate of 183 days or more in any 12-month period with respect to the same or connected projects for customers who are either residents of the host country or who maintain a PE in the host State, the enterprise providing the services is considered to have a PE in the host State. It is often difficult or impossible to foresee when a project will exceed 183 days. Because of the retrospective nature of the provision, corporate, individual, and payroll tax returns may not be timely filed and the taxes (or withholdings) may not be timely paid. Since it is nearly impossible to avoid late filings and withholding, taxpayers will incur penalties and interest. Would CRA be willing to announce an administrative position addressing the practical challenges of complying with the new provision? Would CRA consider permitting taxpayers to file for an extension of filing or payment deadlines (or protective extensions) in such circumstances? Would CRA consider waiving the penalties for late payment or late filing as well as the interest on the penalties?

12. Regulation 102

In May 2010, CRA announced several administrative modifications to the Regulation 102 (hereafter "Reg 102") withholding and reporting obligations that will be helpful in simplifying the compliance and administrative burdens for non-resident employees traveling to Canada on short notice. We believe, however that the current legislative framework would support a broader application of treaty-based waivers under Reg 102. For example, the expanded waiver process addresses only non-resident employees who qualify for the $10,000 exemption under Article XV of the Canada-U.S. Treaty. It is unclear why the waiver process could not be extended to non-resident employees who qualify for the 183-day exemption.

More broadly, under section 153(1.1), where the Minister is satisfied that the withholding requirements would create undue hardship, CRA is authorized to reduce the amount of withholding required. The section does *not* state that each individual employee providing services must satisfy the hardship requirement. Instead, the provision could be interpreted to include the significant hardship that employers and the employee group as a whole suffer from multiple payroll withholdings and filings. Employers incur significant costs in withholding and administering the requirements of Reg 102 from the filing of multiple tax returns, to reporting, reconciliation with home-country tax reporting, to recovery of amounts advanced to employees to mitigate excess withholding taxes. Thus, we believe that section 153(1.1) can be interpreted to permit CRA to adopt simplified reporting and payment processes such as Employer Reporting and Payment Agreements (similar to those used in the U.K.) or other alternatives as set forth below. In addition, under section 220(2.1) the Minister has the authority to waive the requirement for filing of personal tax returns by treaty-exempt individuals. Finally, under section 227(8.4) the Minister can collect from the employer any amounts that the employer fails to deduct or withhold from its employees. Other provisions in section 227 permit CRA to assert penalties and interest against the employer to ensure compliance.

We believe that a broader interpretation of these provisions, together with changes to the guidelines for treaty-based waivers, would significantly reduce the time consuming and costly administrative burdens as well as the payroll withholding requirements on treaty-exempt employees.

Would the CRA consider the following alternatives to the current Reg 102 requirements and the overly stringent policy for obtaining waivers for treaty-based withholding?

a. *Adopt an Exemption System Similar to the United States.* Under U.S. law, if remuneration earned by a non-resident employee is exempt from U.S. federal income tax pursuant to an income tax treaty, the remuneration is not subject to withholding provided that the employer (the withholding agent) obtains appropriate documentation from the non-resident employee. The employee claims the exemption by providing the employer with a Form 8233, *Exemption from Withholding on Compensation for Independent Personal Services (and Certain Dependent) Personal Services of a Non-resident Alien Individual.*

b. *Annual Treaty-Based Waiver.* CRA should consider permitting an employer to file an annual request for a treaty-based waiver for all employees qualifying for an exemption. The information could be provided by the employer for each qualifying individual. In order to provide CRA assurance that the tax will ultimately be paid, the employer might be required to provide a lump-sum payroll deposit or a letter of credit. Either would be trued up on expiration of the waiver. The employer would then file an information return for non-resident employees that would include the following information: name, employer, number of days spent in Canada, and the treaty exemption claimed. To reduce the compliance burden, the employer could file this information on one standard form for all employees who performed services in Canada during the calendar year. CRA might also consider waiving the requirement of filing a personal tax return where a treaty-exempt individual satisfies the waiver requirements. Non-treaty-exempt employees would still file a Canadian income tax return.

c. *Adopt an Employer Reporting and Payment Agreement Similar to the U.K.* The requirements of section 151 of the Act could be satisfied by having the employer provide an Employer Reporting and Payment Agreement similar to those used in the U.K. To ensure payment of the applicable taxes, the employer might be required to provide a letter of credit or make an advance deposit. Where CRA demands a deposit, the employer would have to make an estimate of potential liabilities even though they may believe no tax would ultimately be payable for a year. Alternatively, CRA could specify in the Employer Reporting Agreement the dates for filing any reports and remitting the taxes due. The U.K. reporting agreement requires the employer to provide an undertaking to pay the taxes due on behalf of the employee.

If CRA does not agree with TEI's overall legislative analysis or its recommendations for alternative administrative processes, would CRA be willing to meet jointly with the Department of Finance and TEI to develop the outline of a legislative regime that would implement a simplified Regulation 102 withholding and reporting requirements with broader exemptions for treaty-based waivers?

13. Interest Rates on Arrears/Payments for Anticipated Deficiencies/Advance Deposits

The Auditor General's 2009 report stated that CRA was holding a substantial amount of advance deposits from corporate taxpayers and was paying an interest rate in excess of the government's cost of funds. As a result of the report, CRA implemented an administrative policy that requires taxpayers to justify the amount of their advance deposits and to allocate the deposits to specific taxation years. Large File Case Managers were required to review the allocations and determine the reasonableness of the advance deposits. Subsequent to the implementation of the designation and review process, the interest rate on refunds of excess cash deposits was reduced to the 90-day Treasury bill rate. As a result, the interest rate on taxpayer funds on advance deposit is now the same as the government's cost of funds.

TEI agrees with the Auditor General's findings and recommendation that the government should not pay excessive interest on funds on advance deposit by taxpayers. Given the reduction in the interest rate paid to taxpayers, though, the issue identified in the Auditor General's report has seemingly been resolved. As a result, the administration of advance deposits for reassessments can be simplified by reverting to CRA's prior process of holding taxpayer funds in an undesignated account as of the effective interest date and applying the funds as reassessments are made. The advance deposit mechanism protects corporate taxpayers from onerous, non-deductible interest charges on deficiencies. By reducing the after-tax cost of settling disputes, the mechanism also reduces the scope and degree of controversies with taxpayers.

a. Given the change in interest rates paid on refunds, would CRA reconsider its recent changes to the advance deposit account policy and open discussions with TEI on how this might be accomplished for affected taxpayers?

b. Would CRA confirm that it will accept advance deposits for a prior tax year in order to cover anticipated deficiencies arising from either (1) proposed

reassessments or (2) expected adjustments to subsequent tax years on account of reassessments of similar items in audits of an earlier tax year?

c. Since the interest rate has been reduced, would CRA consider eliminating the requirement for Large File Case Managers to review the propriety of the amount of a taxpayer's advance deposits?

14. Surtax and Loss Carry Backs to a Closed Tax Year

The current carry back provisions allow a carry back to statute-barred tax years as long as there is a valid objection in the carried back year. In one particular situation (*See* Document 2010-0374531I7, *Taxpayer Requested Adjustment to Change a Loss Carryback* (July 30, 2010)), the taxpayer received a Notice of Reassessment for a current year that increased its surtax credits. The taxpayer requested that the surtax credits be carried back to the third preceding tax year. The CRA auditor refused to permit the carry back since the current tax year was open due to an objection. In the auditor's view, the carry back could not be initiated until the current tax year was settled in Appeals since the amount of the surtax credit could change.

The third preceding tax year remained open with Appeals for many years, but at a certain point, CRA Appeals proposed confirming the assessment for the third preceding tax year and closing that year. CRA Appeals also refused to permit the surtax credit to be carried back to the third preceding tax year, prior to confirming the assessment, on the basis that — should the current year be settled and the surtax credits be reduced — CRA would be unable to open the third preceding tax year and recover some or all of the carried back surtax from a potentially statute-barred tax year.

The taxpayer's recourse from the CRA's action would seemingly be to file a claim for refund in the Tax Court of Canada for the third preceding tax year, but the courts are reluctant to decide cases where the only issue is a carry back to an earlier year that arises from a mechanical or arithmetic adjustment to a subsequent year. Is CRA required to process a surtax credit carry back request that is generated under a Notice of Reassessment to an open tax year that is under objection? We invite CRA's comments.

15. Requests for Payment of Auditor's Travel Costs

Increasingly, CRA auditors are requesting that member companies pay travel costs for audits of Canadian taxpayers and their foreign affiliates. The requests include domestic and foreign travel. Although the reimbursement or payment of CRA's travel costs might be appropriate in limited circumstances, *e.g.*, in connection with an APA application or where the books and records are *not* available at the taxpayer's office in Canada, it seems inappropriate for the CRA to routinely request payment of travel costs because the requests can create a conflict of interest for the individual tax auditors. If taxpayers decline a request, a cordial working relationship may be impaired or, worse, the auditor's judgment about the merits of a taxpayer's tax positions may be affected. We invite CRA to explain its policy in respect of requesting taxpayers to pay or reimburse travel expenses for auditors.

16. Auditor Fairness and Impartiality

According to the CRA website, two of the guiding principles or values of CRA are, as follows:

> **Integrity:** is the foundation of our administration. It means treating people fairly and applying the law fairly.
>
> **Respect:** is the basis for our dealings with employees, colleagues, and clients. It means being sensitive and responsive to the rights of individuals.

A similar approach to tax administration was expressed by the U.S. Commissioner of Internal Revenue Douglas Shulman at Tax Executives Institute's 60th Midyear Conference on April 12, 2010, as follows:

> Our responsibility is the same as the responsibility of our taxpayers. Apply the law as it currently exists . . . not how we would like it to be . . . and do so with neither a thumb on the scale in favor of the government, nor in favor of the taxpayer. This is the key to balanced and fair tax administration.

We believe the perception of fairness is key to a self-assessment system. Regrettably, an increasing number of CRA auditors are seemingly adopting a pro-government view of issues without duly considering the taxpayer's position. This creates a perception of arbitrariness, which is frustrating, causes disputes to escalate, and significantly retards issue and case resolution. Just as taxpayers must understand and consider the government's view, CRA auditors should dispassionately evaluate the taxpayer's view. Large File Case Managers rarely intervene, but often reflexively side with the auditor when they do. Even where the case manager acknowledges the taxpayer's position is more likely correct, he or she may feel compelled to defer to a proposed adjustment from an audit specialist (*e.g.*, from the International or Aggressive Tax Planning Directorates).

Is CRA aware of taxpayer concerns and perceptions? If a taxpayer believes an auditor is failing to apply the law in a fair manner, is there any recourse short of waiting for a reassessment and filing an appeal? Are there steps taxpayers can undertake to bring performance issues to the attention of CRA management other than by filing a formal service complaint and following up with the Taxpayers' Ombudsman?

17. Taxpayer Advisory Committees

Before the taxpayer advisory committees (*e.g.*, for large business, international) were eliminated, CRA and representative taxpayers met regularly in a non-adversarial setting to discuss issues of common concern. We believe those committees were helpful for taxpayers and CRA, providing a forum for an exchange of views and educating both about their respective administrative burdens and challenges. The opportunity for taxpayers to meet regularly with CRA also increased the perception of fairness. As important, potential problem areas were often identified and resolved before they escalated into significant compliance or administrative issues.

Hence, we regret the elimination of the advisory committees. Would CRA consider reinstating them?

18. SR&ED Issues

a. *18-month deadline*

To claim SR&ED benefits, corporations must file the prescribed forms (T661 *Scientific Research and Experimental Development (SR&ED) Expenditures Claim* and schedule 31 *Investment Tax Credit – Corporations (2008 and later tax years)*) with the required information within 18 months of the end of the taxation year in which the SR&ED occurs. Projects and claims for which the paperwork is filed late are rejected (even though they are eligible otherwise) and unless errors or omissions on the original forms are discovered and amended within the 18-month deadline, the taxpayer's claim can be adversely affected. Moreover, CRA auditors often use the 18-month deadline to limit the submission of new information, whether technical or financial, even though it pertains to eligible projects that were included in a timely filed claim. This "gatekeeper" perspective causes downward adjustments that undermines the incentive that the government intends to provide for SR&ED activity. Would CRA consider modifying its administrative practices in order to permit upward adjustments of claims during an audit assuming certain minimum disclosure conditions are satisfied?

b. *Appeals — SR&ED*

Section 3.3 of Application Policy SR&ED 2000-02R *Guidelines for Resolving Claimants' SR&ED Concerns* (June 30, 2005) states that "[o]nce the SR&ED technical and financial reviews are completed and the SR&ED report is finalized, the claimant will be sent a Notice of Assessment." In a situation where —

- an SR&ED claim is made via an amended tax return (after the taxpayer's original filing due date and before the day that is 12 months after the taxpayer's filing-due date for a particular year), and

- the entire SR&ED claim is denied by CRA (and thus no changes are made to the original assessment),

would CRA confirm that it will send a revised Notice of Assessment? Such a step ensures that the taxpayer will have an opportunity to file a Notice of Objection after the CRA decision.

19. Amendments to Section 244

Recently announced amendments to section 244 of the Act will facilitate CRA's use of electronic communications in administering the Act. Since implementation will be critical to the success of the initiative, we have a number of questions and comments about the process.

Rather than sending notices of assessment or determination directly to the taxpayer, an email notification will be sent stating that an item is available for the taxpayer to access in a secure CRA electronic account.

a. What is the anticipated content of the email notification? Will it refer to a particular year, type of tax, or notice of assessment, or will the notification simply say that "something" is available for the taxpayer to review?

b. Whom will the notification be sent to? How should the taxpayer change the email address to which notifications are sent?

c. What will CRA do if it receives an automatic response from the taxpayer's email account stating the "mailbox is full" or "over quota"? In such cases, the email has been rejected by the taxpayer's server and thus has not been received. Because of the technological limitation, the taxpayer has no notice of the contents even though the deeming provision in section 244 states that delivery is presumed to be the date that the notice was sent.

d. Would CRA consider sending a notification that a notice of assessment or determination is available in a secure account to more than one representative or authorized person for each taxpayer?

e. Does the taxpayer need to provide an authorization for each of its "sub-accounts" and for each type of tax, or would an authorization be valid for all accounts or types of taxes?

f. Is CRA authorized to send notices of assessment or determination electronically by virtue of subsection 244(14), or must the taxpayer first provide an authorization or request to CRA? If taxpayer action is required, what is the format of the request or authorization?

g. What is the "specified manner" for revoking the authorization to receive a notice of assessment or determination electronically?

20. Follow-up on Prior Year Questions and Discussions

a. *International Tax Forms Simplification (Question 6 of the 2009 Agenda)*

At the 2009 liaison meeting, CRA said that it was reviewing the scope and content of various forms, including Forms T1134A and B, and would consult with stakeholders on potential changes. We invite an update on the status of CRA's review and a discussion of potential revisions to various forms, especially Forms T1134A and B.

b. *Advisory Panel on Canada's System of International Taxation — Large Corporations and Double Taxation Cases*

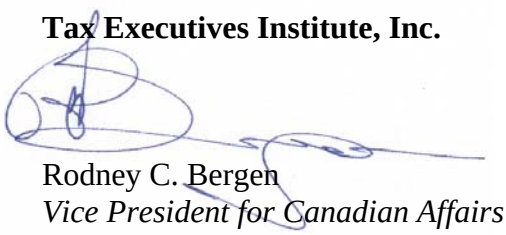
In Question 11 of the 2009 liaison meeting, TEI noted that CRA's Legislative Policy and Regulatory Affairs branch was reviewing the policy that requires large corporations to prepay 50 percent of the disputed tax before seeking competent authority relief in double taxation cases. In response, CRA noted that it had established an internal working group to review various administrative recommendations of the Advisory Panel on Canada's System, including the requirement to prepay 50 percent of the disputed tax. At the time of the 2009 meeting, the working group's deliberations were "ongoing." Would CRA (1) update TEI on the work performed by the working group and, if possible, share its conclusions (including the requirement that large corporations prepay 50 percent of the disputed tax prior to seeking competent authority relief) and (2) comment on the next steps in the evaluation of the current system?

Conclusion

Tax Executives Institute appreciates this opportunity to present its comments and questions. We look forward to discussing our views with you during our December 7, 2010, liaison meeting.

Respectfully submitted,

Tax Executives Institute, Inc.

By: 

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