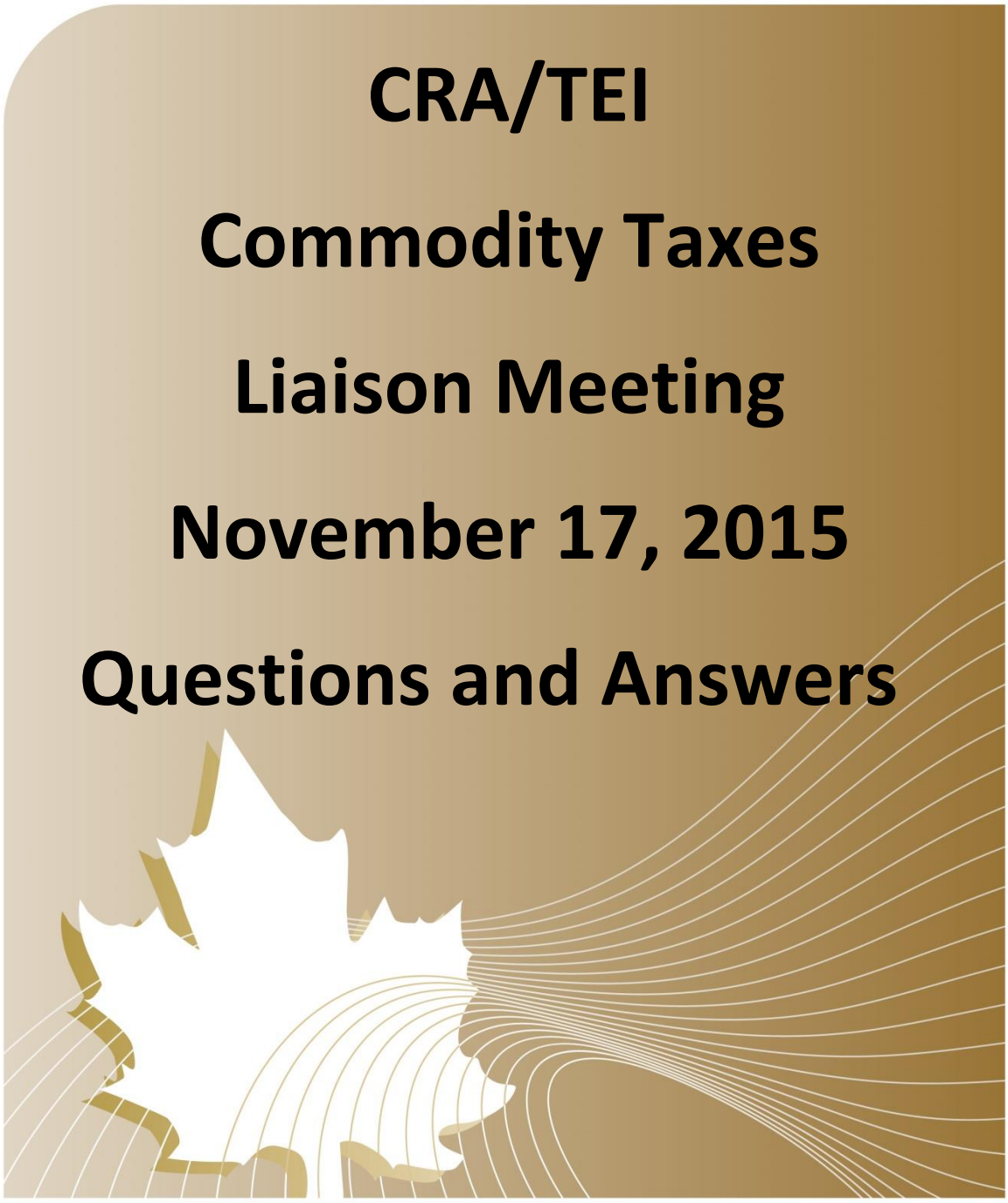
CRA/TEI

Commodity Taxes

Liaison Meeting

November 17, 2015

Questions and Answers



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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, at TEI's liaison meeting on November 17, 2015.

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. 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, the member 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; 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.

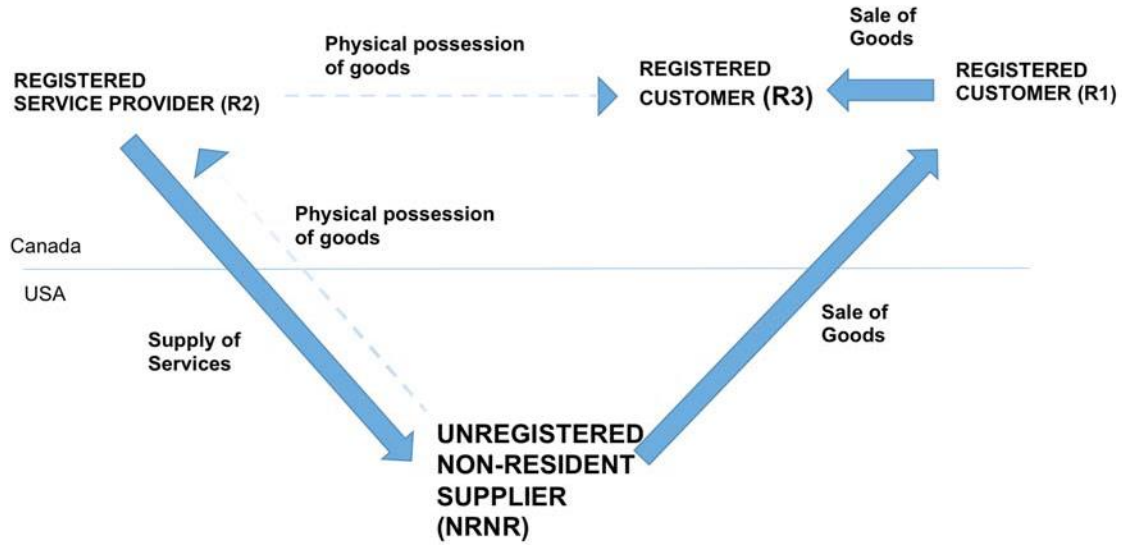
Exception: Since January 1, 2013, the CRA has been administering the GST/HST and the QST for listed financial institutions that are selected listed financial institutions (SLFIs) for GST/HST and/or QST purposes whether or not they are located in Quebec. If you wish to make a request for a ruling related to the GST/HST or QST and these types of listed financial institutions in respect of any particular matter; reference may be made to GST/HST Memorandum 1.4, *Excise and GST/HST Rulings and Interpretations Service.* To make a technical enquiry related to these types of listed financial institutions by telephone, call 1-855-666-5166.

QUESTION #1: Changes to Drop Shipment Rules

Please describe changes CRA or Finance are considering making to the drop shipment rules, particularly with respect to the requirement that physical possession of the property pass to the consignee.

Hypothetical

Canadian registrant ("R1") purchases goods from a non-resident, non-registered U.S. supplier ("NRNR"). The goods are to be delivered with INCO terms of Delivered at Place ("DAP") Canadian registrant and resident's ("R3") location. NRNR has further work performed on the goods by Canadian registered supplier ("R2") before the goods are delivered to R3. R1 sells the goods to R3 immediately upon delivery at R3's premises. R1 owns the goods when the goods are sold to R3.



Can R1 provide a drop shipment certificate to R2, even though R1 does not physically touch the goods, to relieve NRNR from having to pay GST/HST on the supply of R2's commercial services made in respect of the goods?

CRA Comments

Subsection 179(2) of the *Excise Tax Act* serves as an exception to the general drop shipment rule in subsection 179(1). Where all of the conditions in subsection 179(2) are met, it deems a supply of goods or services by a registrant to an unregistered non-resident person to be made outside Canada. As described in paragraph 21 of CRA's GST/HST Memorandum 3.3.1

Drop-shipments, one of the conditions that must be met in order to issue a drop-shipment certificate under subsection 179(2) is that the registered customer (R1 in the scenario provided) acquire physical possession of the goods involved in the drop-shipment situation. Based on the information provided in the scenario provided in the question, R1 does not acquire physical possession of the goods and therefore cannot issue a drop shipment certificate to R2 under subsection 179(2).

The Department of Finance Canada is aware of situations such as the one described in the scenario in which a registrant may not issue a drop-shipment certificate.

QUESTION #2: Guidance Regarding CRA Rulings and Interpretations

Please provide insight into CRA's rulings and interpretations process, and any patterns CRA has identified, to aid the mutual goal of expediting CRA rulings and interpretations:

A. Has the number of requests for rulings and interpretations increased each year?

B. For less complex industry ruling and interpretation requests, please identify any opportunities for improvement industry can take to ensure more timely rulings or interpretations. For example, has CRA noticed any recurring deficiencies in initial submissions that delay CRA's rulings or interpretations?

C. For complex industry ruling and interpretation requests, please provide guidance to improve the drafting of initial submissions. For example, do requests contain sufficient detail? Do requests contain too many irrelevant facts? Do requests clearly define the matters at issue?

D. Is CRA satisfied with requestors' level of participation after requests are submitted or does CRA believe requestors delay the issuance of rulings and interpretations by not replying to follow-up questions in a timely manner?

CRA Comments

Context

Generally, HQ issues precedent and policy-setting rulings and interpretations while our field program issues rulings and interpretations for which policy and technical information is available.

There is a published service standard in place for written requests for rulings and interpretations for those which the field program responds to. The goal is to respond to written requests within 45 business days of CRA receipt of the request and all relevant facts and supporting documentation, 80% of the time. This excludes highly technical and precedent and/or policy setting rulings and interpretations. The result for fiscal year 2014-2015 was 83%.

The nature of many incoming requests involve transactions that have become more complicated for a number of reasons, such as the evolution of business practices and technology, and the varied provincial flexibilities (e.g. HST rates and transitional and place of supply rules) that were introduced with HST in Ontario and subsequently adopted by other HST provinces in the Atlantic. Before this, the rules were generally exactly the same as the GST. As well, the nature of requests received often touch upon multiple legislative areas which need to be considered in formulating a response.

Generally, policy and precedent setting rulings and interpretations require significant research and deliberations which may involve Finance Canada, and in some cases, industry knowledge must be sought to ensure an accurate response. This work must be balanced with other priority workloads, for example, HQ provides technical advice and guidance internally to CRA staff and senior management, Justice and Finance Canada which in many cases is time sensitive, and regularly reviews all CRA technical publications and forms for technical accuracy. These significant workloads have a direct impact on our limited resources.

A. Overall, the number of requests for GST/HST rulings and interpretations has not increased since 2011 (after HST implementation in Ontario). This applies to requests handled by both HQ and the GST/HST Rulings Centres in the regions. The program as a whole generally responds to approximately 3,000 requests each year.

B. The key to ensuring timelier responses to submissions for a request for a ruling or interpretation is the completeness and clarity of the information provided. At times we receive initial complete submissions, however, there are also times when we do not. Incomplete submissions include situations where relevant supporting documentation is missing such as contracts or where facts are incomplete or not provided or explained clearly. Paragraph 35 of Memorandum 1.4 on the CRA website provides a fairly comprehensive list of the components required for a complete submission. Response 2C below provides this paragraph for ease of reference as well as other useful information related to complete submissions.

C. We assume that this question refers to the highly technical and precedent and/or policy setting rulings and interpretations issued by the HQ program. As indicated in 2B above, there is no general rule of thumb in that submissions are not all deficient nor are they all well prepared. As such, the quality/completeness of submissions varies. The TEI could

assist the CRA by ensuring that its members are aware of Memorandum 1.4, and in particular Paragraph 35 which articulates the CRA requirements. This is copied below for ease of reference.

> ***Documentary requirements***
>
> *35. Taxpayers must provide all relevant documentation with their requests for rulings or interpretations. Complete documentation ensures that the CRA can answer the request in a timely manner, and that the ruling addresses the taxpayer's specific situation. Requests for rulings should include the following:*
>
> - *the name and address of the person making the request and, if the person has a Business Number (BN), the person's BN, as well as the person's licence number (e.g., excise duty or excise tax licence number) where applicable, or if the request is being made by a third party, the name and address of the third party's client and, where applicable, the taxpayer's BN;*
> - *where a representative (e.g., an accountant, bookkeeper, or lawyer) is acting on behalf of the person for whom the ruling will be made, the CRA requires a written third party authorization certifying that the representative is authorized to act on behalf of the taxpayer, and outlining the purpose, scope, and period of the authorization. This is also a requirement for persons requesting an interpretation where the interpretation applies to a particular named taxpayer. Appendix B provides more information on third party authorization;*
> - *if another CRA office is considering the ruling request, a statement to that effect;*
> - ***a complete description of the facts and of each transaction**;*
> - *a statement as to whether the request involves a matter concerning which the requestor is currently under audit or has filed a notice of objection, or which is before the courts;*
> - *for each transaction covered by the ruling request:*
>   - *a statement of its purpose*
>   - ***the requestor's interpretation of the application of the relevant legislative provisions**;*
>   - *the requestor's interpretation of common law or Civil Code of Québec issues relevant to the request (e.g., the existence of a trust or an agency relationship); and*
>   - ***description of the specific interpretative concern on which the ruling request is based**;*
> - *a description of significant transactions that took place before, or may take place after, the transactions in respect of which a ruling is being requested,*

and which may be part of a series of transactions that includes the transactions in respect of which the ruling is requested;

- ***copies of any relevant supporting agreements or documents, together with references to, and summaries of the specific provisions of these agreements or documents which pertain to the request****;*
- *where the request is for a GST/HST ruling and concerns the application of anti-avoidance rules to a transaction, a submission to establish that the transaction will not result directly or indirectly in a misuse of the GST/HST provisions of the Excise Tax Act or an abuse of the GST/HST provisions of that Act read as a whole. For information on the general anti-avoidance rule, refer to GST/HST Memorandum 16.4, Anti-avoidance Rules;*
- ***an analysis, where applicable, of authorities*** *(e.g., Canadian case law citations, published commentaries and references to jurisprudence)* ***known to the taxpayer or their representative which support the taxpayer's position and those that do not,*** *with comments as to why the authorities in support of the taxpayer's position should prevail.*

Submissions should include **all** relevant contracts, agreements and other supporting documents i**n their entirety**, including all schedules and appendices. Requestors should not submit partial agreements/documents. In conducting its analysis, the CRA will review the entire documents, determine which clauses are pertinent to the request and refer to these clauses as required (whether or not the client believed they were pertinent). Some submissions may also rely only on certain legislative provisions to support a particular position. However, in such cases, the position may not stand up to further scrutiny of the full facts/contractual obligations and a more complete legislative analysis by the CRA. The submission of partial agreements will lead to delays in processing requests and is viewed by the CRA as incomplete documentation. Lack of documentary evidence may alternatively lead to the issuance of an interpretation as opposed to a ruling, or result in the inability to provide a response.

Sometimes, incoming requests for rulings do not provide sufficient facts or all of the pertinent facts (e.g. missing agreements; no reference to/copy of legislative authority for fees, payments, programs; insufficient background information). Delays in processing rulings could be reduced if requestors provided a complete listing of all relevant facts and supporting documents, a clear explanation of the ruling(s) requested, an analysis of the relevant legislation and any related jurisprudence and how it applies to the facts of the particular transaction(s) in the written submissions that supports the ruling(s) requested or the position being advocated by the requester.

Requests are also sometimes submitted with insufficient lead time provided to the CRA (such as imminent closing dates where the GST/HST implications may be an "afterthought"). Requestors need to build sufficient lead time into the request in order for the CRA to undertake its review and respond in a timely manner.

D. Clients are generally cooperative in responding to CRA requests for clarification or additional information. However, there are instances where the CRA has experienced reluctance on the part of the requester to submit the additional information it has requested. The reason(s) for this reluctance is unknown. Perhaps there is concern about providing confidential commercial information or perhaps there is a concern that the client could be supplying information that would not support their position.

   Rulings are sometimes delayed because requestors do not provide timely responses to follow-up requests for additional information by the CRA. This requires officers to follow up with additional requests for the information or alternatively, to conduct research that should have been completed by the requester in support of their request. Where long delays occur before the requested information is finally received, officers are required to spend time re-familiarizing themselves with the issues and facts of the file once again. This inhibits the timely issuance of a ruling or interpretation. To help the CRA provide timelier responses, requestors should make every effort possible to avoid lengthy delays in providing additional information requested by the CRA.

QUESTION #3: Application of FET to the Sale of Marine Fuel for Use as Ships' Stores

Please confirm CRA's policy regarding the application of Federal Excise Tax ("FET") to the sale of marine fuel for use as ships' stores.

Relevant Law

Subsection 23(1) (tax on various articles at schedule rates) of the *Excise Tax Act* ("ETA") states "whenever goods mentioned in Schedule I are manufactured or produced in Canada and delivered to a purchaser of those goods, there shall be imposed, levied and collected... an excise tax in respect of the goods at the applicable rate set out in the applicable section of that Schedule…."

Schedule I of the ETA provides the applicable rates of FET. Paragraph 9(a) states the rate for unleaded gasoline is $0.10 per litre, Paragraph 9(b) states the rate for leaded gasoline is $0.11 per litre, and Paragraph 9.1. states the rate for diesel fuel is $0.04 per litre.

Subsection 23(2) (by whom and when tax is payable) of the ETA states "where goods are manufactured or produced and sold in Canada, the excise tax shall be payable by the manufacturer or producer at the time of delivery of the goods to the purchaser thereof."

Paragraph 23(6) of the ETA states tax is not payable in the case of "goods mentioned in Schedule I that are purchased or imported by a licensed wholesaler for resale by him."

Section 68.17 (payment where use as ships' stores) of the ETA states "[i] if tax under Part III has been paid in respect of any goods and a manufacturer, producer, wholesaler, jobber or other dealer has sold the goods for use as ships' stores, an amount equal to the amount of that tax shall, subject to this Part, be paid to that dealer if that dealer applies for it within two years after that sale of the goods."

Hypothetical

A supplier holding an Excise Tax License "E" sells marine fuel to a trader/broker not currently licensed for excise tax purposes. Under the instruction of the trader/broker, the supplier directly delivers the marine fuel to a designated foreign vessel for use as ships' stores. The title of marine fuel transfers from the supplier to the trader/broker in the flange of the foreign vessel, and the trader/broker sells the marine fuel to the foreign vessel. The foreign vessel provides a form K36A, Ships' Stores Declaration and Clearance Certificate, to the supplier.

A. Does FET apply to the sale of marine fuel from the supplier to the trader/broker when the supplier directly delivers the marine fuel to a foreign vessel entitled to an excise tax exemption?

B. If the sale of marine fuel to the trader/broker is on a tax paid basis, please confirm the trader/broker would be eligible to claim a refund of excise tax using form N15, Application for Refund/Rebate.

CRA Comments

A. Based on the facts presented, FET would apply to the sale of marine fuel from a licensed manufacturer to the trader/broker (i.e., unlicensed wholesaler (jobber)). The sale of the fuel in this transaction is subject to excise tax, despite the fact that it is delivered directly to a foreign vessel. Subsection 23(2) of the *ETA* would apply, and the trader/broker would pay FET to the licensed manufacturer.

The following legislative provisions highlight those sales or transactions where FET is not payable; thereby, creating an excise tax exemption:

(i) sales to a licensed wholesaler (subsection 23(6));
(ii) sales to a licensed manufacturer (paragraph 23(7)(a));
(iii) "diesel fuel for use in the generation of electricity" (paragraph 23(8)(c)); and
(iv) goods exported (section 66).

However, the *ETA* does not contain a similar provision stating that sales of motive fuels/petroleum products for use as ships' stores are excise tax exempt. Therefore, the trader/broker must purchase the fuel on an excise tax-paid basis. It can submit Form N15, Application for Refund/Rebate for refund with the CRA.

B. With the sale of marine fuel to the trader/broker (unlicensed wholesaler) on an excise tax-paid basis, we confirm that the trader/broker is eligible for an excise tax refund.

1. Subsection 68.01(2) of the *ETA*: "If tax under this Act has been paid in respect of fuel and no application is made in respect of the fuel by any person under section 68.17 or 70, the Minister may pay an amount equal to the amount of that tax to a purchaser who applies for the payment and who uses the fuel as ships' stores."

2. Section 68.17 is a refund provision for excise tax that "has been paid in respect of any goods and a manufacturer, producer, wholesaler, jobber or other dealer has sold the goods for use as ships' stores". A dealer may be eligible for an excise tax refund if it applies for refund within the statutory two-year time limit.

Both provisions enable a person to qualify for an excise tax refund. In the question presented, the trader/broker is eligible for an excise tax refund pursuant to section 68.17, as it has sold the goods for use as ships' stores. In order to do so, it must submit a completed Form N15 to the Summerside Tax Centre. Excise tax refunds are subject to a statutory two-year time limit.

When an unlicensed wholesaler submits Form N15, it must maintain evidence that the fuel was sold for use as ships' stores. Form K36A, *Ships' Stores Declaration and Clearance Certificate* provides evidence that fuel purchased by an end-user is for use on board an international aircraft or vessel.

An unlicensed wholesaler or foreign vessel should contact its local CBSA office, in order to notify that agency of its intention to have Form K36A duly stamped.

QUESTION #4: Section 150 Elections for Canadian Branches of Foreign Banks
(Finance Only)

QUESTION #5: Use of CFIA Registration Numbers for Agriculture and Fishing Property (GST/HST) Regulations

Does CRA use the registration numbers assigned to certain types of animal feed by the Canadian Food Inspection Agency ("CFIA") to determine whether a feed product meets the criteria set out in the Agriculture and Fishing Property (GST/HST) Regulations (Part 2 to the Schedule)? If so, how does CRA evaluate the registration number to determine if it meets those criteria? Alternatively, if not, does CRA have any recommendations for suppliers of animal feed products to facilitate the identification of feed products as either a complete feed, supplement, macro-premix, micro-premix, or mineral feed?

Factual and Legal Background

Animal feed producers typically supply thousands of animal feed products and purchase a similar number of products from other suppliers for use as ingredients in their manufacture of such animal feeds. Most of those products are regulated under the Feeds Act and Regulations and are registered with the CFIA.

All mixed feeds manufactured outside Canada; mineral feeds; converter feeds; micro-premixes; specialty feeds such as forage additives, viable microbial products, flavours, and mould inhibitors; milk replacers and any other substitutes for milk; fox feeds; single ingredient feeds listed in Part 2 of Schedule IV or V of the Feeds Regulations; and complete feeds, supplements, and macro-premixes for all livestock labeled with nutrient guarantee levels outside the ranges indicated in Table 4 (Schedule I) of the Feeds Regulations require registration prior to their importation, manufacture, or sale in Canada. Feeds for cattle, horses, sheep, goats, swine, poultry, fish, foxes, mink, and rabbits are regulated under the Feeds Act and Regulations.

Supplies of feed sold in bulk quantities of at least 20 kg or in packages containing at least 20 kg of complete feed, supplement, macro-premix, micro-premix, or mineral feed (other than a trace mineral feed) as defined in the Feeds Regulations and labeled in accordance with those Regulations are zero-rated if the feed is designed for rabbits or a single species or class of farm livestock, fish, or poultry ordinarily raised or kept to produce, or to be used as, food for human consumption or to produce wool as per Schedule VI, Part IV of the ETA.

There is much confusion in the animal feed industry over when a product meets the zero-rating criteria. Indirect tax practitioners without a background in animal science or chemistry generally lack the means to evaluate whether animal feed products meet these criteria.

Hypothetical

Supplier A produces a product commonly used as an ingredient in the manufacture of animal feeds as F100 Dairy Fat with CFIA registration number 580441. Supplier B produces a similar palm fat product used for the same purpose as F100 Dairy Fat with CFIA registration number 990911. Both products are used interchangeably as an ingredient in the manufacture of more complex feeds for dairy cattle.

Supplier A charges GST/HST on supplies of this product; however, Supplier B does not charge GST/HST on supplies of its product.

A large proportion of animal feed products purchased, manufactured, and sold by animal feed producers require registration with the CFIA. The task of evaluating whether a particular product meets the conditions set out in paragraphs (a) and (c) of Part 2 to the Schedule of the Agriculture and Fishing Property (GST/HST) Regulations could be simplified greatly if CRA advised which products, via their registration numbers, meet those criteria.

CRA Comments

GST/HST registrants are required to collect GST/HST on taxable supplies of livestock feed and feed ingredients that they make in Canada unless those supplies are zero-rated. Certain supplies of feed as described in the *Agriculture and Fishing Property* (GST/HST) *Regulations* (Regulations) are prescribed property for the purposes of section 10 of Part IV of Schedule VI to the ETA and are zero-rated. These supplies include:

> *Feed, when sold in bulk quantities of at least 20 kg (44 lbs) or in bags that contain at least 20 kg (44 lbs), that*
>
> *a) is a complete feed, supplement, macro-premix, micro-premix or mineral feed (other than a trace mineral salt feed), all as defined in the Feeds Regulations, 1983,*
>
> *b) is labelled in accordance with those Regulations, and*
>
> *c) is designed for*
>
> *i. a single species or class of farm livestock, fish or poultry ordinarily raised or kept to produce, or to be used as, food for human consumption or to produce wool, or*
>
> *ii. rabbits.*

The types of feed mentioned above (complete feeds, supplements, macro-premix, micro-premix and mineral feeds other than trace mineral salt feeds) are not the only types of regulated livestock feeds under the *Feeds Act*. Other feeds include converter feeds, specialty feeds and single ingredient feeds. The supply of these other feeds is not zero-rated under the Regulations.

Registration numbers are looked at as part of our research but what we are looking for is whether the livestock feeds are the types of feeds listed in the regulations. Our first tool is the product label which normally provides that information. Ideally, the label states the type of feed. Next we look at the manufacturer's promotional information. Much of this information can be found online.

Regarding the situation presented in the question, without having seen the information that the manufacturer presented to the CFIA in acquiring the registration number it remains unclear how the product received its particular registration number. The registration number does not appear to follow the CFIA labeling protocol. The label states that the product is for dairy cattle but the first digit of the registration number is a 9 which means it is a feed for multiple species instead of a 5 which would signify that it is a feed for dairy cattle as per the product label. The supply of a feed which is designed for multiple species is not zero-rated under the Regulations.

The second digit of the registration number signifies the type of livestock feed. The number 8 means the product is a specialty feed and the supply of specialty feeds is subject to the GST/HST. The competitor's product, the F-100 Dairy Fat has a 9 as the second digit. The 9 means the product is a single-ingredient feed. The supply of single-ingredient feeds is not zero-rated under the Regulations.

Further action on our part would require the TEI member to provide us with contact information for the supplier of the F-100 Dairy Fat.

QUESTION #6: Changes to the Financial Institution GST/HST Annual Information Returns

Please discuss any changes CRA and Finance are considering for the Financial Institution GST/HST Annual Information Return following our meeting last February. Would it be helpful for TEI members to provide additional information addressing how that return could be simplified, combined with other existing returns, or eliminated?

CRA Comments

Since the meeting with TEI representatives last February, the CRA and Finance Canada have had further discussions with respect to the information requirements related to the Financial Institution GST/HST Annual Information Return; however, we are not yet in a position to discuss any changes to the annual information return for de minimis financial institutions or listed financial institutions (financial institutions).

As you are aware, the annual information return for financial institutions (Form GST111) was introduced because there was a need for supplementary data from the financial services sector given the complexities in the sector and the specific GST/HST rules that apply to financial institutions. This additional data from financial institutions helps to improve compliance, maintain an efficient and effective tax administration system, and assess policy and legislative changes in a timely manner. It also assists the Government in meeting its commitments (under the Comprehensive Integrated Tax Coordination Agreement) to the provinces under a harmonized sales tax. As a result, any decision to change what information will be collected and from whom will only be made after a detailed review by CRA and Finance Canada.

As part of Finance Canada's overall review of how the GST/HST applies to financial services and financial institutions, and the reporting requirements related to the annual information return for financial institutions, Finance Canada has consulted with industry. However, we would welcome any additional information TEI would like to provide with its members' views on how the return could be simplified or combined with other existing returns. Please note that because of the nature and extent of the changes that would be involved in combining the annual information with other existing returns, our efforts in the short term, are focused on whether changes can be made to simplify the existing information return.

QUESTION #7: Double Taxation of Master Trusts Under the Pension Plan Rules
(Finance Only)

QUESTION #8: Extension of the Financial Services and Financial Institutions (GST/HST) Regulations to TFSAs, RESPs and RDSPs
(Finance Only)

QUESTION #9: Impact of Group Changes to the Qualifying Group Nil Consideration Elections

Legal Background

Under Subsection 156(4)(b) of the ETA, members of qualifying groups must file the RC4616 "Election or Revocation of an Election for Closely Related Corporations and/or Canadian Partnerships to Treat Certain Taxable Supplies as Having Been Made for Nil Consideration for GST/HST Purposes" with CRA. Parties to an election entered after December 31, 2014 must file the RC4616 by the earliest day on which the electing members must file a GST/HST return for the reporting period in which the effective date of the election occurs. Parties to an existing election in effect before January 1, 2015 must file the RC4616 before January 1, 2016.

Hypothetical

Company A, Company B, and Company C are parties to an existing election on December 31, 2014. Company D becomes a qualifying member and a party to an election with Companies A, B, and C with an effective date of September 15, 2015. Companies A, B, C, and D are all monthly GST/HST filers. An election covering Companies A, B, C, and D is filed before October 31, 2015.

Are Companies A, B, and C still required to file the RC4616 to cover their pre-existing election for the period of January 1, 2015 to September 15, 2015?

CRA Comments

While an election or revocation of an election under section 156 of the *Excise Tax Act* is between two eligible members of a qualifying group, the Form RC4616 permits multiple elections to be filed with the CRA on one form. Every combination of eligible members whose names appear on the form and on any attached page (e.g., A&B, A&C, B&C) is considered to have made or revoked an election effective on the date specified on the form. The Form RC4616 replaces the Form GST25 which was not required to be filed with the CRA.

Since Company A, Company B and Company C are party to an existing election effective before January 1, 2015, that is still in effect on that date, a Form RC4616 must be filed before January 1, 2016 specifying the original election date. This is the case even though Company D has subsequently elected with each of those parties by filing the Form RC4616 with the CRA listing Company A, Company B, Company C and Company D on the form (and attached page).

Under simplified procedures issued in *Excise and GST/HST News* No. 95, members of a qualifying group that have existing elections, each with a different effective date that is before January 1, 2015, may file one Form RC4616 indicating December 31, 2014, as the effective date.

Each Form GST25 that was previously completed should be kept with the electing members' books and records and reflect the original effective date of the election.

QUESTION #10: Documentation to Support Input Tax Credits

Part I: Amalgamations

Despite our best efforts to ensure compliance, there are often significant challenges to have invoices issued by suppliers reflect the name of a new amalgamated corporation in the months immediately following an amalgamation. It is not commercially feasible or practical for a new amalgamated corporation to refuse to pay suppliers because the supplier's invoice identifies the predecessor corporation's name rather than the new amalgamated corporation's name. Similar challenges arise when a wholly-owned subsidiary is wound up and dissolved into its parent corporation and the business of the subsidiary is continued by the parent, as suppliers may continue to issue invoices in the name of the dissolved subsidiary.

If the predecessor corporation's name is identified on the supplier's invoice during the period immediately following an amalgamation, would GST/HST Compliance Programs be willing to accept alternative documentation from the supplier acknowledging the customer is the new amalgamated or parent corporation, as well as an acknowledgement from the new amalgamated or parent corporation that the predecessor corporation will not claim an input tax credit (ITC) for that particular supply?

Part II: Input Tax Credits of "Dissolved" Partnerships
Question

Corporation A owns 100% of the shares of Corporation B and Corporation C.

Corporations B and C formed a partnership in which they own 99.9% and 0.1% of interest in the partnership, respectively. All activities of the partnership are commercial in nature. Corporation C sells its interest in the partnership to Corporation B. The assets of Corporation B are then wound up into Corporation A.

A. Please confirm Subsection 272.1(6) of the ETA will allow the GST/HST account of the partnership to remain open so the partnership can continue to claim the ITCs that arose during the period the partnership existed.

B. Please confirm Subsection 272.1(6) and/or paragraph 272(a) will allow Corporation A to claim ITCs for the GST/HST addressed to the partnership after the partnership ceases to exist.

C. Can Corporation A claim ITCs with respect to Division III tax paid by or addressed to the partnership upon the importation of product into Canada after the partnership interests were transferred to Corporation B and Corporation B wound up into Corporation A?

D. Does the response to C change if the imported product belongs to an unrelated, non-resident person, the product was imported for the partnership to provide a service to the product, and the product was subsequently exported out of Canada?

Part III: Proposal for Further ITC Discussions

TEI would like to expand discussions regarding the above topics to address the challenge that taxpayers face to ensure suppliers place the proper name of the customer on the bill to section of their invoices. Parent corporations often choose company names for their group with derivatives of the parent's name and suppliers often struggle when referencing the precise name on their invoices. TEI would like to share the experience of its members in this area and determine if there is an opportunity for an administrative approach that would meet the Compliance program's validation requirements while permitting the businesses to operate in an efficient manner.

CRA Comments

Part I

Whether property or services were acquired for use in a commercial activity by a particular corporation is a question of fact. Depending on the timing involved and the facts of the situation it may be feasible for Audit to accept alternative documentation to support the ITC. The *Input Tax Credit (GST/HST) Regulations* (the Regulations) do provide for invoices to be made out in trading names or the names of the recipient's duly authorized agent or representative. The Regulations also set out the possibility to use as supporting documentation "any other document validly issued or signed by a registrant in respect of a supply made by the registrant on which GST/HST is paid or payable", therefore allowing a registrant NewCo or ParentCo the possibility to claim the ITC in respect of the supply they acquired in the course of their commercial activity even though the invoice itself was in the OldCo's name.

Part II

A. A GST/HST registrant partnership that acquires a property or service may claim an ITC for the GST/HST paid or payable on the acquisition of the property or service to the extent to which the partnership acquired the property or service for consumption, use or supply in the course of its commercial activities provided that all of the conditions for claiming the ITC are met.

   Under subsection 272.1(6) of the ETA, where a partnership ceases to exist, the partnership is deemed for purposes of Part IX of the ETA not to have ceased to exist until the registration of the partnership is cancelled. As a result, the former partnership continues to be subject to the GST/HST rules until it is deregistered. Therefore, ITCs would be available to the partnership for expenses incurred by it during the period the partnership existed as long as its registration has not been cancelled and all of the conditions for claiming an ITC have been met.

B. Regarding Corporation A's eligibility for ITCs, Corporation A may be eligible to claim an ITC for tax paid or payable on property or services acquired by Corporation A that are consumed, used or supplied in its commercial activities. While Corporation A would not be able to claim ITCs for tax incurred on the property or services acquired by the partnership, the partnership may be eligible to claim those ITCs subject to subsection 272.1(6) as noted above.

   Paragraph 272(a) of the ETA provides special rules that apply where a subsidiary is wound up into its parent company if the parent owns not less than 90% of the issued shares of each class of the capital stock of that subsidiary immediately before the winding up. Specifically, paragraph 272(a) states, in part, that for the purposes of applying the provisions of Part IX of the ETA in respect of property or a service acquired or imported by parent as a consequence of the winding-up, the parent is deemed to be the same corporation as, and a continuation of, the subsidiary.

   Accordingly, where Corporation B was eligible to claim ITCs with respect to property or services it acquired, but did not claim those ITCs prior to winding-up into Corporation A, paragraph 272(a) would permit Corporation A to claim those ITCs to the extent that the property or service is acquired by the parent as a consequence of the winding-up. However, paragraph 272(a) does not allow Corporation A to claim ITCs for property or services acquired by the former partnership.

C. With respect to Corporation A's eligibility for ITCs, Corporation A may be eligible to claim an ITC for the tax paid or payable with respect to the importation of the product to the extent to which it imported the product for consumption, use or supply in the course of its commercial activities and it is established that Corporation A is either the constructive importer of the goods under section 178.8 of the ETA or the *de facto* importer of the goods, as the case may be. While Corporation A would not be able to claim ITCs for tax incurred on the importation where it is determined that the partnership is the constructive importer of the goods or *de facto* importer of the goods, as the case may be, the partnership may be eligible to claim those ITCs subject to subsection 272.1(6) as described in the response to question A.

D. Corporation A may be eligible under subsection 169(2) of the ETA to claim an ITC for an amount equal the tax paid or payable by the Corporation with respect to an importation of a product of an unregistered non-resident provided Corporation A imports the product for the purpose of making a taxable supply of a commercial service in respect of the product to the non-resident. While Corporation A would not be able to claim ITCs for tax incurred on the importation where it does not meet these conditions, the partnership may be eligible to claim ITCs for that tax if it meets those conditions subject to the application of subsection 272.1(6) as described in the response to question A.

Part III

We are open to hearing your comments and experiences.

QUESTION #11: Bad Debts

Section 231 of the ETA allows suppliers to take deductions against net tax for tax associated with bad debts. Section 272 of the ETA (amalgamations) allows new amalgamated corporations to claim bad debts of their predecessor corporations.

There does not appear to be equivalent treatment for the supply of a business under Section 167 of the ETA whereby the recipient (the purchaser of the business) can claim bad debts of the supplier even though the supplier sold its accounts receivable to the recipient. As a result, the supplier would be required to claim the bad debts after it ceased commercial activity, having sold its business.

Similarly, former partners cannot claim bad debts after a partnership is dissolved and wound up pursuant to Subsection 272.1. Dissolved partnerships continue to exist under Subsection 272.1(6) until the partnership's GST/HST registration is cancelled. This result could require a dissolved partnership to remain registered for a significant period to claim against its bad debts, even though those bad debts would be accounted for by the former partner into which the partnership was dissolved. This also leaves the dissolved partnership at the mercy of CRA when claiming such ITC for bad debts as CRA may use its discretion to deregister the dissolved partnership before all ITCs relating to bad debts are claimed.

A. Would Finance consider amending Section 231 (or Sections 167 and 272.1) to allow the recipient (in the case the sale of all of a business) or the former partners (in the case of the dissolution of a partnership) to claim the bad debt adjustment?

B. Please comment on CRA's administrative position regarding a "predecessor" (supplier of the business or dissolved partnership) maintaining its registration and filing returns solely to claim the bad debt adjustment. In what situations might CRA exercise its discretion to cancel a "predecessor's" registration before it was able to claim all its bad debts?

CRA Comments

B. In general, the Minister will cancel a partnership's registration under the authority of subsection 242(1) of the ETA where the partnership is dissolved. It will not be cancelled if a person joins the partnership or a partner leaves, as long as the partnership continues and is not dissolved under the terms of the partnership agreement nor by law. Partnership acts of provincial jurisdictions generally require the filing, in a local registry office, of a declaration of the dissolution of a partnership.

   Pursuant to section 231 of the ETA, a partnership may make a bad debt adjustment in a return filed for the partnership for a reporting period prior to its dissolution. Where a partnership ceases in law to exist, subsection 272.1(6) of the ETA deems the partnership not to have ceased to exist to allow the registration of the partnership to remain for purposes of Part IX of the ETA until the registration of the partnership is cancelled.

   We understand that a request can be made, preferably in writing, to the local tax services office to the attention of Business Registration to keep the GST/HST program account open. Whether Business Registration will grant the request will depend on the facts of the particular situation.

The question of whether a debt becomes a bad debt is a factual one, and must be determined on a case-by-case basis taking into consideration generally accepted accounting principles (GAAP). In general, a debt is considered a bad debt when all reasonable steps have been taken to obtain payment and it has become evident that the debt is uncollectible.

Subsection 231(1) of the ETA provides for the recovery of the GST/HST component of bad debts. In general, a supplier may claim a deduction from net tax for a bad debt where the following conditions are met:

- the supplier made a taxable supply (other than a zero-rated supply) for consideration to a recipient with whom it was dealing at arm's length;
- it is established that all or part of the total of the consideration and tax payable in respect of the supply has become a bad debt and the supplier writes off the bad debt in its books of account;
- the supplier reported the tax collectible in respect of the supply on its return for the reporting period in which the tax became collectible and remitted all net tax, if any, as reported in that return; and
- the supplier claims the deduction in a return within the four year time limit set out in subsection 231(4) of the ETA.

It is important to note that members of a partnership are deemed to be related to the partnership under subsection 126(3) of the ETA. Under subsection 126(1) of the ETA, related persons are deemed not to deal with each other at arm's length. Thus, the bad debt deduction permitted by section 231 of the ETA is generally not available if the bad debt resulted from a transaction between members of a partnership or with other related persons.

If it is established that all or part of the total of the consideration and tax payable in respect of an arm's length taxable supply (other than a zero-rated supply) has become a bad debt and the supplier writes off the bad debt in its books of account before making a supply of the related business to another person, then the supplier may claim a bad debt deduction in the return for the reporting period in which the bad debt was written off provided the other conditions under section 231 have been met. If an amount has not become a bad debt before the supplier makes a supply of the related business that includes the accounts receivable, then generally the supplier would not be eligible to

make a bad debt deduction under section 231 of the ETA. As a result, the supplier would not be eligible to keep its GST/HST program account open for the sole purpose of claiming possible future bad debt deductions.

QUESTION #12: E-Commerce Sales by Foreign-Based Vendors
(Finance Only)

QUESTION #13: Barters of Property
(Finance Only)

QUESTION #14: Offset of Refunds for Partnership Divisions

Under Subsection 228(7) of the ETA, closely related corporations can offset refunds or rebates of GST/HST against remittable amounts of an elected group. The file of the coordinator is not transferred to Collections if one of the corporations within the group has a refund and a desk audit is elected by CRA for any of the members of an elected group.

The administrative policy of CRA is also to offset any GST/HST refunds of partnership divisions against liabilities under the same Business Number. However, when a partnership with divisions is chosen for a desk audit, the shortfall resulting from the refund under audit is automatically transferred to Collections.

For example, ABC is a partnership with three divisions. Division 1 has a net tax payable of $20 million, Division 2 has net tax payable of $2 million, and Division 3 has a tax refund of $6 million. ABC files a net return of $16 million. Division 3 is chosen for a desk audit. A liability of $6 million is immediately sent to Collections and becomes payable under the collection rules for ABC, even though CRA has an administrative policy allowing registrants with more than one division to offset net tax payable with refund claims from different divisions of the same registrant.

This policy creates a cash flow issue for partnerships and puts partnerships in a constant collection position even though similar treatment is rightly not triggered under a Section 228(7) election for closely related corporations. Further, this collection issue is triggered by CRA undertaking a desk audit, not by the registrant making late payments.

Would CRA or Finance consider recommending taxpayers with various divisions, such as a partnership, not be penalized when a desk audit is in progress for refunds until the audit is completed and the refund claims are rejected? Alternatively, could Section 228(7) be amended to include partnerships?

CRA Comments

This issue will be further discussed and considered by the relevant areas within the CRA.

QUESTION #15: Audit Practice Going Against CRA's ITC Entitlement Administrative Position

Companies A and B are GST registrants, engage exclusively in commercial activities, members of a closely related group, and have elected under Section 156 of the ETA to have transactions between them to be for nil consideration. They have also made a corresponding Section 334 election under the Quebec Sales Tax Act ("QSTA").

Company A enters into a contract to procure goods and services from suppliers. The invoices are issued to and paid by Company A. Company A is legally required to pay for the invoices under the contract and is the recipient under the ETA and QSTA.

However, certain goods and services are consumed by Company B. These purchases are recorded in Company B's general ledger ("GL"). Company A records and claims input tax refunds ("ITRs") for the Quebec sales tax paid on invoices where the expenses are recorded by Company B.

ARQ has taken the position during QST audits "[t]he ITR'S claimed on certain invoices issued to [Company A] should be claimed by [Company B], even though they are addressed to [Company A]. The fact is that [Company B] is the person who acquired the goods or the services in the course of is commercial activity."

ARQ indicated similar policy with respect to allowing ITRs to an entity other than the one that received the invoice at the symposium held by Association de Planification Fiscale et Financiere ("APFF") in May 2014.

Please clarify whether Finance and CRA hold a similar position in light of the harmonization between GST and QST. Please note TEI members have encountered a similar position from CRA in the course of GST/HST audits.

CRA Comments

There are two different possibilities in this scenario depending on whether or not there is a supply between Company A and Company B and if/how the supply is recorded in the companies' books and records. Where the companies act in accordance with the section 156 election and the supply between them is deemed to be made for nil consideration, Company A would be entitled to claim the ITC as they would have then resupplied the goods or services to Company B and Company B would be accounting for the transaction in their books and records, the same as Company A would on the initial acquisition.

Where the only accounting for the supply is done by Company B and the invoice is made out in Company A's name, we would look to the *Input Tax Credit (GST/HST) Regulations* and determine if the invoice contained "the recipient's name, the name under which the recipient does business (i.e., the trade name of the business), or the name of the recipient's duly authorised agent or representative." If Company A was acting as Company B's duly authorised agent or representative, then we would allow the ITC to be claimed by Company B but not Company A, as they would not have acquired the supply in the course of their commercial activities.

QUESTION #16: Fair Market Value and Valuation Methods

Builders must estimate the fair market value ("FMV") of real property on which they self-assess GST/HST for purposes of Section 191(1) of the ETA. The publication, *Policy Statement P-165R – Fair Market Value for Purposes of Part IX of the Excise Tax Act,* states FMV:

> Represents the highest price, expressed in terms of money or money's worth, obtainable in an open and unrestricted market between knowledgeable, informed and prudent parties acting at arm's length, neither party being under any compulsion to transact.

CRA further indicates there are three general methods to FMV valuation: the cost method, the direct comparison method, and the discounted cash flow method.

The Courts have held when a new building is constructed, the best method for calculating FMV is the cost method (Beaudet et al vs. the Queen).

Practically speaking, appraisals are not always available when self-assessment is required. Cost is generally available, but certain costs (e.g., land) may not reflect market value given the lag in time between acquisition and construction.

Please comment on the use of cost as a FMV valuation method and when other methods may be more appropriate, considering factors such as the significant time between construction completion date and self-assessment date, market volatility, etc.

CRA Comments

The term "fair market value," with respect to property or a service supplied to a person, is defined in subsection 123(1) of the *Excise Tax Act* (ETA) to mean the fair market value of the property or service without reference to any tax excluded by section 154 from the consideration for the supply. Thus, for GST/HST purposes, the ETA does not specifically define the term "fair market value" other than to state that it excludes the GST/HST and any provincial retail sales taxes.

As set out in GST/HST Policy Statement P-165R, *Fair Market Value for Purposes of Part IX of the Excise Tax Act*, the CRA's position is that fair market value represents the highest price, expressed in terms of money or money's worth, obtainable in an open and unrestricted market between knowledgeable, informed and prudent parties acting at arm's length, neither party being under any compulsion to transact. The CRA's position is consistent with those taken by the courts in various cases concerning the valuation of real property.

The CRA recognizes that the real property valuation profession in Canada generally uses one of three valuation methods to determine the fair market value of real property: (1) the cost method; (2) the direct comparison method; or (3) the income method.

The CRA also recognizes that the real property valuation profession is governed by uniform standards of professional practice which regulate not only the valuation methodology, but also the business practice and conduct of real property valuators. The real property valuation profession is a profession of highly skilled individuals who exercise their expertise and professional judgment in choosing which valuation method is the most appropriate in any given situation. For these reasons, it would be inappropriate for the CRA to choose a specific valuation method for determining the fair market value of real property such as a residential

complex. Thus, the CRA defers the matter of choosing the appropriate valuation method to the professionals in that field, and has adopted a general position that no particular valuation method should be categorically excluded when determining the fair market value of real property.

That being said, we would like to comment that the cost method generally involves the addition of two amounts: (1) the estimated value of the land as though it were vacant and available to be developed to its highest and best use; and (2) the depreciated costs of the improvements (i.e., the estimated cost of the improvements, plus the estimated entrepreneurial profit, plus the estimated contributory value of any site improvements, less the estimated accrued depreciation in the subject). Thus, for purposes of determining the fair market value of a residential complex under subsection 191(1) of the ETA, determining the "cost" is more complicated that simply summing the expenses incurred to construct or substantially renovate the residential complex.

The CRA understands that some in the real property valuation profession consider the cost method to be the most appropriate valuation method to use to determine the fair market value of a residential complex when it is new or nearly new. Also, the CRA understands that the courts have accepted the use of the cost method in a number of cases such as in *Beaudet et al v. the Queen*. With respect to that particular case, we would like to point out that although Justice Lamarre stated that the cost method could readily be used in that case, and that it is the method that has generally been used by the court for determining the fair market value of a residential complex that is the object of a self-supply under subsection 191(1) of the ETA, she did not say that it is the "best" valuation method to use when determining the fair market value when a new building is constructed.

We note that the same court accepted the use of the income approach in the case of *Grafton Developments Inc. v. the Queen*, although that particular case did not deal with a newly constructed residential complex.

At any rate, the CRA appreciates that in some cases it may be difficult for a builder to determine the fair market value of a residential complex that is the object of a self-supply under subsection 191(1) of the ETA. However, in accordance with *GST/HST Memorandum 1.4, Excise and GST/HST Rulings and Interpretations Services*, the CRA does not issue rulings on how to determine the fair market value of property or a service. Where the CRA disagrees with the value used for self-assessment purposes, it may request its own appraisal.

QUESTION #17: Rebates and Net Tax Remittances

Subsection 228(6) of the ETA allows net tax remittable to be offset by refunds and rebates to which a registrant is entitled. The refund or rebate must be filed with the GST/HST return in which the offset is requested.

Many registrants must file electronically. However, only certain rebates can be filed electronically. This can create significant cash flow and timing issues for builders and landlords unable to offset their net tax remittable with their rebates.

A. When will other rebates be available to file electronically?

B. Are there other options available to registrants desiring to offset their net tax remittable with the rebates not available for online filing?

CRA Comments

A. Currently, the following rebates can be filed online:

- GST66 / GST284, *Application for GST/HST Public Service Bodies' (PSB) Rebate and GST Self-government Refund*
- GST490, *GST/HST Rebate Application for Federal, Provincial, and Territorial Governments*
- GST189, *General Application for Rebate of GST/HST* (for the Ontario First Nations point-of-sale relief only - reason code 23)
- GST190, *GST/HST New Housing rebate application for houses purchased from a builder* (option 1A or 1B only)
- GST523, *Non-Profit organizations- Government funding form*.

If you overlook an electronic rebate application when filing an online return, you can use the "File a rebate" option in My Business Account to file the rebate application separately from the return.

If you are a selected listed financial institution (SLFI) that reports both the GST/HST and QST, the QST version of these rebate forms (if applicable) must be submitted using the applicable paper form.

No additional rebate types are planned for electronic filing in the near term. The reasons vary depending on the rebate in question, but generally come down to one or more of the

following: (1) the rebate requires receipts or documentation be submitted at the time of filing; (2) the annual number of rebates received does not justify the cost of building an electronic solution.

B. If a registrant is eligible to under subsection 228(6) of the ETA to offset a rebate amount to reduce the registrant's net tax remittable amount reported on its GST/HST return but the rebate application cannot be filed online along with the return, this does not mean that the registrant cannot apply the offset. To do so, the registrant must send the rebate application by mail to the Summerside Tax Centre or Sudbury Tax Centre (as indicated on the rebate application) no later than the day the registrant files its return.

QUESTION #18: Remote Work Location Election

When a work site is less than 80 Km from an established community, is it acceptable to file the election for Subsection 191(7) of the ETA if only one worker at the site qualifies for the remote work location exemption in subparagraph 6(6)(a)(ii) of the Income Tax Act ("ITA")?

Legal Background

Subsection 191(7) of the ETA includes a deeming provision allowing registrants to construct worker accommodations for staff and contractors at a remote work location without triggering a self-assessment under Subsection 191(3) of the ETA.

Subsection 191(7) does not reference the remote work location provision contained in Subparagraph 6(6)(a)(ii) of the ITA. However, GST/HST Policy P-090 Remote Work Site makes it clear CRA takes the position the income tax interpretation for a remote work location must also be used for the Subsection 191(7).

A reasonable conclusion would be the policy in P-090 applies to a particular remote work location. Stated differently, if the work location is considered "remote" under the income tax interpretation, the deeming provisions in Subsection 191(7) are available if the registrant makes the election for the work location.

On June 24, 2015, CRA Income Tax Ruling's directorate issued an interpretation (file no. 2015-057025) stating a work site located within 80 Km of an established community can only be determined to be a remote work location "on a worker-by-worker basis." This interpretation also states the income tax exemption for a remote work location "is a point-in-time

determination as facts could change from year to year or month to month. Therefore, a worker should monitor the available housing on an annual basis."

Under this income tax interpretation, a registrant may use the election in Subsection 191(7) for a work location less than 80 Km from an established community if the location qualifies as a remote work location for any one worker. Therefore, it follows a registrant must review the status of each worker on an annual basis to confirm the site continues to qualify as a remote work location so it can rely on the deeming provisions in Subsection 191(7).

Hypothetical

When the ability to use the remote work location exemption is determined on a worker- by-worker basis, the following situation will occur.

Should a mega-project be located within 80 Km from an established community and the established community has little or no available residential accommodations, the registrant will not be able to use the election in Subsection 191(7) if there is some accommodation available when a worker first occupies a unit of worker accommodation at the mega-project site. The registrant in this case will be a builder and be required to self-assess GST under Subsection 191(3) of the ETA. For the life of the project, the registrant will be required to determine which portion of the worker accommodation is used for commercial or exempt activities and deal with the change-of-use and basic tax content rules accordingly.

The inability to use the election in Subsection 191(7) results in unrecoverable GST being incurred by the registrant on temporary worker accommodations constructed and used for the mega-project and then removed when the project is completed.

CRA Comments

Although subparagraph 6(6)(a)(ii) of the *Income Tax Act* (ITA) and subsection 191(7) of the *Excise Tax Act* (ETA) both deal with remote work locations, their purpose and application are different.

Subsection 191(7) of the ETA provides an exception to the self-supply rules in subsection 191(1) to (4) where a registrant builder carries on the construction or substantial renovation of a residential complex or an addition to a residential complex for the purpose of providing a place of residence or lodging to employees, contractors or subcontractors at a remote work location. Where a registrant builder has made an election under subsection 191(7), the self-supply rules in subsections 191(1) to (4) will only apply at such time as the residential complex is leased

primarily to persons who are not employees, contractors or subcontractors of the registrant. Where the residential complex is sold, the sale is taxable unless the registrant builder had earlier paid tax under the self-supply rules.

The election under subsection 191(7) is only available where, at the time of the election, an employee, contractor or subcontractor of the registrant builder, who is required to be at the work location to carry out their duties, cannot reasonably be expected to establish and maintain a self-contained domestic establishment at the work location because of its remoteness from any established community.

The election under subsection 191(7) is made with respect to the residential complex. The conditions for making the election must be satisfied at the time that the election is made and the election must be made before the complex is first occupied by an employee, contractor or subcontractor of the registrant builder. As stated in Example 3 of GST/HST Policy Statement P-090, *Remote Work Site*, the fact that a work location may no longer be considered remote from an established community at a time subsequent to making the election under subsection 191(7) would not invalidate the election.

The CRA will consider each particular situation on a case-by-case basis to determine whether the registrant builder meets the requirements for making an election under subsection 191(7).

We would encourage TEI members to request a GST/HST ruling if they are uncertain about the application of subsection 191(7) in their particular case.

QUESTION #19: Joint Venture Election
(Finance Only)

QUESTION #20: Definition of "Income" for Reporting Institutions

Section 273.2 of the ETA requires "reporting institutions" to file an annual information return (Form GST 111). Subsection 273.2(2) states persons are "reporting institutions" if: (a) the person is a financial institution at any time in the fiscal year, (b) the person is a GST/HST registrant at any time in the fiscal year, and (c) "the total of all amounts, each of which is an amount included in computing, for the purposes of the [ITA], the person's income…for the

last taxation year of the person that ends in the fiscal year, exceeds the amount determined by the formula $1 million x A/365 where A is the number of days in the taxation year."

TEI's members have not been able to obtain definitive written or oral guidance from CRA regarding the meaning of "the total of all amounts, each of which is an amount included in computing, for the purposes of the [ITA], the person's income." Rather, answers obtained from CRA in response to telephone inquiries on this issue varied from accounting profit, net income of line 300 of the T2 return, taxable income of line 360 of the T2 return, the person's gross sales based on their financial statements, and adjusted accounting profit.

Subsection 273.2(2)(c) references "an amount included in computing, for the purposes of the [ITA], the person's income." Therefore, a reasonable conclusion would be to use the ITA's calculation of income or profit for tax purposes. This computation is set forth under Division B of Part I of the ITA and corresponds to the net income (or loss) for income tax purposes (*i.e.,* line 300 of the T2 Corporation Income Tax Return or line 503 of the T5013 Statement of Partnership Income). Subsection 9(1) of the ITA provides "a taxpayer's income for a taxation year from a business or property is the taxpayer's profit from that business or property for the year."

A less reasonable interpretation of Subsection 273.2(2)(c) is meaning sales figures, as Subsection 273.2(2)(c) references the ITA and the ITA does not define sales figures. Had Subsection 273.2(2)(c) intended to reference sales figures, it would have be more reasonable to refer to "the total of all consideration that became due" as Subsection 149(1)(b) of the ETA did when defining "financial revenue."

Please address what constitutes "the total of all amounts, each of which is an amount included in computing, for the purposes of the *Income Tax Act*, the person's income" under Subsection 273.2(2)(c).

CRA Comments

Under subsection 273.2(2) of the *Excise Tax Act*, a person (other than a prescribed person or a person of a prescribed class) is a reporting institution throughout the person's fiscal year if the person meets the conditions set out in paragraphs (a) to (c) of this subsection. Paragraph 273.2(2)(c) provides, in part, that the total of all amounts each of which is an amount included in computing, for the purposes of the *Income Tax Act* (ITA), the person's income, or, if the person is an individual, the person's income from a business, must exceed $1 million for the last taxation year of the person that ends in the fiscal year.

Determining whether or not a specific amount is to be included in computing income in a particular situation, for the purposes of the ITA, is a question that has to be referred to the Income Tax Rulings Directorate. The Directorate has a general enquiries email address where you can send your question. The link is: itrulingsdirectorate@cra-arc.gc.ca.

However, we can provide the following general guidance:

If the total annual revenue of a corporation or a partnership exceeds $1 million, then the condition set out in paragraph 273.2(2)(c) would generally be met.

Also, an amount corresponding to accounting profit or adjusted accounting profit would generally not represent the total of all amounts referred to in paragraph 273.2(2)(c), based on our understanding of the meaning of these terms. In addition, an amount corresponding to net income reported on line 300 or taxable income reported on line 360 of a T2 *Corporation Income Tax Return*, or to net income reported on line 503 of Schedule 1 of a T5013 *Statement of Partnership Income*, would generally not represent the total of all amounts referred to in paragraph 273.2(2)(c). Finally, gross sales, or sales figures, alone, would generally not represent the total of all amounts referred to in paragraph 273.2(2)(c).

QUESTION #21: Sharing of CRA Submissions and Responses

TEI, as well as other professional organizations such as the Chartered Professional Accountants ("CPA") and Canadian Bar Association ("CBA"), provide CRA with submissions and requests for clarification from time to time. Has CRA considered how CRA could share or diffuse such information amongst practitioners and industry registrants? For example, could CRA make such responses available to the public by posting the information in one centralized databank?

CRA Comments

We understand that this question refers to the questions submitted (for which answers are then provided by the CRA) for the annual meetings that the CRA has with the TEI, Chartered Professional Accountants (CPA) and Canadian Bar Association (CBA). It should be noted that written responses to questions are provided to the TEI and the CBA. The format of the meetings between the CPA and the CRA is not based on such a formalized Q and A approach.

The TEI and CBA could share the information they receive from the CRA between themselves and the CPA and all three bodies could disseminate it to members through their websites and/or newsletters. This type of dissemination would directly target those who would find this information most useful. Such a distribution would be a far more direct and effective means of

disseminating this information than for example, posting it somewhere on the CRA website. It's likely that members of the associations would very much appreciate receiving this information in this manner.

External stakeholders such as the TEI, CPA and CBA could significantly help the CRA by sharing this type of information between themselves and disseminating it through their various websites and newsletters to the right target audiences. This approach also provides an excellent opportunity for the CRA to leverage third party stakeholders as envisioned in CRA Vision 2020 and the GST/HST Rulings White Paper.

The CRA fully supports and encourages TEI, CPA and CBA to take the initiative to share the Q and A information it provides for dissemination to members on their websites or in their newsletters.

Another alternative to consider would be for the CRA to make the information it provides to the TEI and CBA available to the tax publishing houses as is currently done with the HQ severed rulings letters, which are then accessed by subscribers. This alternative may require the signing of a "waiver" on the part of TEI and CBA to release the information, and the CRA may need to sever the identities of TEI and CBA from the information. This approach would also be a more direct and effective means of disseminating this type of information to interested parties.

We also understand that the TEI has published the Qs and As on Knotia in the past. If TEI communicated and encourage this practice to the CBA and they did the same, CRA involvement would not be required, and the information would be available to those interested. This could be another alternative for consideration by TEI which would be helpful to the CRA.

The CRA has also given consideration in the past to posting this type of information on the CRA website. In assessing the costs involved (such as translation and the maintenance required so that the information remains up to date) and the possible benefits derived, we believe that this approach would be far less effective and direct for a number of reasons which include:

- Posting it on the CRA website would be a more "passive" dissemination of this information than it being posted on a website or included in a newsletter that specifically targets commodity tax practitioners or industry groups.

- Any information posted to the CRA website must be available in both official languages and must be maintained to ensure that it remains current. This would be somewhat cost prohibitive in that it would require the CRA to dedicate already scarce resources to translate and maintain this material.

- Finding this information on the CRA website may be challenging. The website architecture is designed such that information that is high in demand and impacts the general public or large segments of the population tends to be placed in more readily accessible locations on the site. In relative terms, this type of very technical information would not get priority placement on the site, given the low demand.

Given the above, this would be the least effective and most costly means of disseminating this type of information.

QUESTION #22: Rules for Recovery of GST/HST on Out-of-Pocket Costs

CRA sought input and TEI provided feedback for CRA to develop a publication regarding the rules for recovery of GST/HST on out-of-pocket costs. Please provide an update regarding the status of this publication.

CRA Comments

An Info Sheet regarding this issue has been drafted and we expect to publish it in 2016. The Info Sheet reflects the input that the TEI has provided to us with respect to this issue and will address the specific situations that were identified as areas of concern with respect to the application of GST/HST.

We appreciate the valuable input that the TEI has provided to us with respect to this issue since it greatly assists us in developing relevant and useful GST/HST publications.

QUESTION #23: My Business Account Update

CRA indicated in prior discussions it would update and refine the My Business Account Service, taking into account feedback received from TEI members. Please provide an update regarding this process.

CRA Comments

Since the last meeting with TEI in May 2015, MyBA has implemented the following changes:

- Expanded Submit documents to accept documents for T2 (Corporation) audits.

- Refined Enquiries service for GST/HST rebates with an expanded, clearer list of categories that users can select from.

- Improved user friendliness (or usability) of Suggestions service.

- Renamed View mail (correspondence) to View mail.

- Added more programs to the Submit document Service. These new programs allow a user to submit documents to the Agency without the need to have a case or reference number.

Our next release is scheduled for May 2016 and is dedicated to improving the usability of all services in MyBA as well as applying a new overall look and feel to each page.

We will also be implementing a communications feature that will provide taxpayers who are being audited with an interface for sending enquiries to the auditor assigned to their file. This feature will also display responses from the auditor.

The CRA continually strives to improve its secure online portals to deliver information and services that are technically correct, clear, and easy to understand. We are committed to providing the best possible service. We are responsive to your feedback and thank you for your suggestions that contribute to our online services development.

QUESTION #24: CRA's Audit Centralized Intake Centre

CRA adopted a centralized intake centre to facilitate the allocation of audits amongst available staff nationwide and manage its workload. An unintended result of this workload allocation for larger organizations with related groups is the scheduling of multiple audits within a very short time frame. This problem arises because a number of different auditors from various tax services offices ("TSOs") may contact large organizations for an audit of one or more entities within the related group within a brief timeframe (as short as 9 months).

For example, one TEI member's company was contacted by five different auditors located in four different TSOs, which created a total of 11 new audits. Moreover, two separate auditors chose to audit the same corporation but for different audit periods.

Would CRA consider reviewing its workload allocation process when dealing with large organizations with related groups, including assigning only one or two auditors to the group for efficiency and offering the possibility of having one large case manager for the group?

CRA Comments

The GST/HST Refund Integrity (RI) Program has made significant efforts to alleviate the issue addressed in Question 24:

- As of October 19, 2015, divisional accounts belonging to the same BN 11 level are automatically routed to one office if an audit is in progress in one of these divisional accounts. However, if related accounts have different numbers at BN 11 level, they are not routed to a single office. This involves significant time and resources allocated in building an interface between the two systems.

- If the account belongs to the Large Business Audit population, these files are transferred to the home TSO that is responsible for the registrant's account.

- We try to avoid having two people working on the same account. In this circumstance, if RI is pursuing the examination of a refund and a post audit is in progress, RI will contact the post auditor to have them advise the registrant of the pending examination and to reach a conclusion as to whether the return should be transferred to the post auditor or have it continue as a RI examination.