TAX EXECUTIVES INSTITUTE, INC.

INCOME TAX QUESTIONS

Submitted to

CANADA REVENUE AGENCY

DECEMBER 5, 2017

Tax Executives Institute Inc. ("TEI" or the "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 ("CRA") during our liaison meeting on December 5, 2017. Should you have any questions about the agenda in advance of the meeting, please do not hesitate to contact Fraser E. Reid, TEI's Vice President for Canadian Affairs, at (604) 609-2956, or Paul T. Magrath, Chair of TEI's Canadian Income Tax Committee, at (905) 944-5000, extension 7264.

A. Introductory Question

In prior years, the Assistant Commissioner, Legislative Policy and Regulatory Affairs Branch, has provided an insightful update on the CRA's overall strategic direction. We invite the Assistant Commissioner to continue this tradition and provide an update that includes his thoughts on the vision for the Branch's future and the role TEI can play in achieving that vision.

CRA RESPONSE

We are living in a world that is becoming increasingly complex; where operational pace will keep increasing and government-wide priorities will keep advancing along with Canadians' expectations. To this end, Mr. Geoff Trueman continues to lead the Legislative Policy and Regulatory Affairs Branch (LPRAB) in its vision to support the [CRA] in achieving excellence in program compliance and service delivery to all its clients and to maintain a highly educated, experienced and specialized staff in dealing with this anticipated change.

In designing and delivering all our programs and services, fairness and integrity are our guiding principles, informing our decisions and underscoring our conduct. Since his appointment as Assistant Commissioner of LPRAB in October 2015, Mr. Trueman continues to ensure that the Branch remains committed to these principles; looking for better ways to proactively reach out to taxpayers, facilitate compliance by renewing its commitment to client-focused service, and to becoming clear and straightforward communicators with

Canadians. Together with Ms. Cathy Hawara who was appointed as Deputy Assistant Commissioner of LPRAB in June 2016, they make it a priority to ensure that LPRAB continues to deliver on its diverse mandate, comprising numerous specialized functions—each of which has a significant influence on compliance with statutes for which the CRA has administrative responsibility.

Specifically, these functions include the provision of world-class rulings and technical interpretations; regulation and enforcement of registered charities and deferred income and savings plan regimes; and the management of the legislative and regulatory processes. The Branch continues to establish and clarify the interpretation of tax laws and is responsible for recommending legislative amendments to the Department of Finance on behalf of the whole of CRA.

As in prior years, LPRAB will focus on strengthening public confidence through its collaboration with stakeholders in an effort to find ways to better increase effectiveness and efficiency in the delivery of all its programs and services, especially of late in the Income Tax Rulings functions (for example, the recent collaboration with respect to the Advance Income Tax Rulings process and the introduction of the Dedicated Telephone Service). Each Directorate within LPRAB continues to build on established relationships with stakeholders to improve the accessibility and range of information products available.

In this regard, we would like to reiterate that the maintenance of its ongoing relationship with TEI continues to be a priority for both LPRAB and the CRA.

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

Question 1. *CRA Consultations on Changes to the Voluntary Disclosures Program*

On August 7, 2017, TEI submitted comments to the CRA regarding the proposed changes to the Voluntary Disclosures Program ("VDP") outlined in *Draft Information Circular – 1C00-1R6 – Voluntary Disclosures Program*. Please provide an update on the status of those proposed changes, including:

a) If at the time of the liaison meeting a final information circular has been released, in the spirit of transparency, please discuss the CRA's rationale for some of the key changes as they relate to large/sophisticated taxpayers;

b) If at the time of the liaison meeting a revised information circular has yet to be released:

   i. Please provide an update on when we might expect to see the final changes.

   ii. Please discuss some of the key focus areas as they relate to large/sophisticated taxpayers and the rationale for selecting those areas.

iii. TEI welcomes the opportunity to discuss its submission in further detail.

CRA RESPONSE

The CRA still expects to release the formal changes to the VDP policy in the fall of 2017.

Two of the focus areas of interest to TEI would be the proposed exclusion of VDP applications from certain large corporations and the proposed exclusion of VDP applications relating to transfer pricing adjustments.

The issue is not so much one of refusing relief as providing the right process for the review of different situations. For example, transfer pricing situations require an in-depth examination and the accuracy of the disclosure needs to be reviewed by transfer pricing auditors. It is not a situation where everyone can quickly agree that a specific amount, to the penny, should have been reported in Canada.

We expect this will be clarified in the final version of the policy.

The CRA has carefully considered all of the feedback it received during the consultation process.

Question 2. *Electronic Filing of Mutual Fund Trust Returns and Other Online Services*

In its response to TEI's 2016 request for an update on the availability of online services to mutual fund trusts, the CRA indicated that trusts, including mutual fund trusts, with no taxable income, tax payable, or refundable credits will be able to electronically file Form T3RET, *T3 Trust Income Tax and Information Return*, beginning in January 2018. The CRA also indicated that this service is expected to be expanded to include taxable returns and the majority of other trusts in the following year. With respect to T3 self-service portal options, the indication was that the CRA is currently reviewing its options.

Please provide an update regarding when the CRA might release guidelines and procedures for the electronic filing services being made available to trusts in January 2018. Because a significant number of mutual fund trusts may not qualify for electronic filing in January 2018 (e.g., trusts with taxable income, tax payable, or refundable credits), can the CRA confirm that they remain on track to expand the availability of electronic filing to the majority of other trusts in 2019? If so, will that be for 2018 returns to be filed in 2019? In addition, can the CRA provide an update regarding the findings of its review of the T3 self-service portal options?

CRA RESPONSE

Guidelines and procedures for the electronic filing services being introduced on January 8, 2018 were made available by the CRA on the Canada.ca website in early November 2017 under *How to File a T3 Return* [https://www.canada.ca/en/revenue-agency/services/tax/trust-administrators/t3-return/how-file-t3-return.html].

Due to Government's commitment announced in the 2017 Federal Budget to examine ways to enhance the tax reporting requirements for trusts in order to improve the collection of beneficial ownership information, the CRAs ability to expand T3 electronic services may be impacted. The CRA is no longer able to commit to a timeline for the expansion of electronic services.

The CRA continues to review options for the introduction of T3 self-service portal options. The CRA cannot provide a date at this time as to when online services will be available.

Question 3. *Employer Provided Social Events*

During the 2016 TEI-CRA liaison meetings, the CRA verbally agreed to recommend a 50-dollar increase to the allowable nontaxable limit for employer-provided social events (i.e., from $100 to $150). Has this recommendation been made and approved? If so, when will the change be announced? Will the new limit be effective for 2017 taxation years?

CRA RESPONSE

Beginning in 2018, the threshold for reporting employee benefits derived from employer-sponsored social events will be increased to $150. All other aspects of the current policy CRA administrative policy remain the same.

Question 4. *Access to Information Requests*

The *Access to Information Act* is a very important tool for taxpayers to access information that the CRA has about a matter subsequent to a reassessment, as taxpayers do not always receive detailed information from the CRA regarding the basis of a reassessment. In its response to our 2016 question regarding the timeliness of CRS's responses to taxpayer requests under the *Access to Information Act*, the CRA stated that "the ATIP Directorate is continuously looking at ways to improve the efficiencies and effectiveness of our operations and resources," including "encouraging areas of the CRA to increase the use of informal means of disclosure to provide personal information. Taxpayers have a right to complete accurate, clear and timely information."

Our members continue to experience significant delays in receiving responses to *Access to Information* requests, with response times often exceeding one year. In certain instances, complaints made to the Office of the Information Commissioner regarding such delays have

been viewed as well-founded, which confirms that the Information Commissioner regards these delays as concerning.

Despite the CRA's comments during the 2016 liaison meeting regarding the use of informal means of disclosure, many auditors remain reluctant to share information with taxpayers based on informal requests. For example, upon requesting copies of their T20 audit reports, some of our members have been instructed by their audit teams to file *Access to Information* requests, while others have been able to obtain their T20 audit reports through informal requests. The CRA's audit manual states: "The [audit] reports may also be made available to the taxpayer/registrant through an informal request for information or under the *Access to Information Act*." It is unclear from this statement whether the CRA's policy is that a taxpayer should always (or even generally) be provided with a copy of its T20 audit report upon an informal request.

Having to file an *Access to Information* request to obtain a basic audit document results in an undue delay to the taxpayer and burdens the Access to Information and Privacy Directorate with unnecessary requests, increasing systemic delays. In addition, providing a taxpayer with a copy of the T20 audit report upon an informal request shortly after a reassessment will assist the taxpayer in complying with the large corporation rule in subsection 165(1.11) in filing a notice of objection.[1]

Furthermore, in the case of a reassessment under the General Anti-Avoidance Rule ("GAAR") or any other reassessment that requires approval from Headquarters, our members report that their informal requests for copies of the GAAR or other referral memos to Headquarters are routinely denied, and that they must rely on the *Access to Information Act* to obtain copies of such memos. It is particularly concerning that a taxpayer may not learn the CRA's view regarding alleged misuse or abuse under the GAAR until 12+ months after the reassessment, particularly when it is the CRA's burden to prove such misuse or abuse.

a) Please provide an update regarding the allocation of resources to the Access to Information and Privacy Directorate and comment on steps taken over the past year to reduce delays.

CRA RESPONSE

Allocation of resources:

The [CRA] has invested significant resources in its access to information and privacy (ATIP) program with a budget this fiscal of over 11.2 million and an equivalent of 120 planned Full-time Equivalents (FTEs)—this is almost double the budget and FTE

[1] Unless otherwise indicated, all references to "section," "subsection," or "paragraph" herein are to sections, subsections, or paragraphs of the federal Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.), as amended (the "Act").

count in 2010–2011.

While direct costs for dedicated ATIP resources can be identified, government-wide there is no methodology or standard approach for calculating the significant costs associated with document search and collection from the branches and regions.

For example, there are over 200 employees, known as ATIP contacts, in the department responsible for gathering the responsive records and then countless subject matter experts that must review the records and make recommendations on release.

Additional steps taken to reduce delays:

The Agency recognizes the importance of meeting its obligations under the Access to Information Act. This is why in the fall of 2016, the Agency put in place an inventory reduction plan to sustain improved performance over the long term. The plan sets targets for reducing carry-forward inventory. In 2016–2017, the carry-forward inventory was reduced by 26%.

This fiscal [year], there has been a 16% increase in the Agency's compliance rate, that is files completed on time, with 86% of files completed within legislative timeframes compared to 70% for the same period last year.

As part of the inventory reduction plan, in 2016–2017, the ATIP Directorate completed a Lean Six Sigma review of its processes to identify ways to improve existing processes with the goal to complete ATIA and PA requests more efficiently and faster. Through this process the processing time of moderately complex files has been reduced by 44% and the processing time of high complexity files has been reduced by 38%.

Beyond the formal ATIP process to access information, the Agency actively promotes informal disclosure. To enhance informal disclosure in the Agency, in collaboration with an Agency working group, in 2016–2017, the CRA implemented the Directive for the Disclosure of Taxpayer and Other Information. This Directive provides an overview of, and guidance on, disclosure of information, including both informal disclosure and formal disclosure. The Directive is a complement to program-specific procedures that contain more details on these subjects.

The CRA continues its work in support of informal disclosure including further development of training and awareness tools.

b) TEI believes that, in the interests of transparency and efficiency, taxpayers should be entitled to receive copies of their T20 audit reports upon informal request. Does the CRA agree with this position?

CRA RESPONSE

The CRA agrees with this position. Completed and approved T20 Audit Reports may be released to the taxpayer through an informal request. General guidelines for auditors to respond to informal taxpayer requests for document and information, including the release of the T20 Audit Report, are included in the Income Tax Audit Manual, section 3.4.7: https://www.canada.ca/en/revenue-agency/corporate/about-canada-revenue-agency-cra/access-information-privacy-canada-revenue-agency/virtual-reading-room/income-tax-audit-manual-domestic-compliance-programs-branch-dcpb-1.html#3.4.7. Further detailed guidelines to assist auditors to handle informal requests for information are under development.

c) Please comment on whether taxpayers are entitled to receive copies of GAAR or any other referral memos to Headquarters (redacted to remove any third-party information) upon informal request.

CRA RESPONSE

We encourage transparency and communication in the conduct of an audit. Informal disclosure of the GAAR referral (or other referrals) from a TSO to Headquarters would be done, with severing for Section 241 (re: third party information), solicitor client privilege, deliberations or other similar matters including information for or from the Department of Finance and program procedures.

Information that would decrease the effectiveness of the audit may not be disclosed. For example, if an issue is still under review and no conclusion has yet been reached or the information is incomplete.

In certain situations, where auditors are unsure as to what to disclose after following guidance in the audit manual, etc., they may need to consult internally, and this may include with HQ program areas, Legal or the ATIP Directorate for specific files.

The CRA position on the application of GAAR is carefully communicated to a taxpayer prior to reassessment in a proposal letter, with the opportunity for representations to be made. The proposal letter and final letter will include the GAAR analysis and a response to any representations received.

There has been substantial work done in the Agency in this area and the CRA will continue to advance informal disclosure. The CRA will be refreshing its communications to the audit staff regarding "informal disclosures."

Question 5. *Update on Rulings Consultations*

The House of Commons Standing Committee on Finance's October 2016 report, *The Canada Revenue Agency, Tax Avoidance and Tax Evasion: Recommended Actions*, recommended that the Minister of Revenue conduct a comprehensive review of the advance tax ruling process by March 31, 2017. On February 8, 2017, TEI participated in a conference call with officials in the Income Tax Rulings Directorate to discuss the current advance tax rulings process and identify ways to make it more efficient, effective, and less costly. Our discussion covered the pre-consultation process, fee structure, specific types of issues on which the CRA will not provide rulings, and best practices in other tax jurisdictions. Please provide an update on any developments regarding this matter.

CRA RESPONSE

Following the completion of the review of the Advance Tax Ruling ("ATR") process, the Minister of National Revenue reported to the Finance Committee in her *Report on Progress* dated May 29, 2017, that a number of key changes would be implemented before the end of the year, being March 31, 2018. These key changes are:

- More frequent and better communications between the taxpayer and the CRA, including a meeting with taxpayers to be held no later than within four weeks of receipt of an ATR request.

  The goal of this key change is to improve engagement, provide earlier feedback on the quality and sufficiency of the tax submissions for the rulings requested and where possible provide an earlier indication of our view on the rulings requested.

- Increase awareness of the ATR process by:

  - conducting workshops at conferences and/or courses sponsored by national tax organizations;

  - reviewing and updating our Information Circular (IC 70-6) more frequently to provide more clear instructions on ATR requirements;

  - providing a sample "best practice" ATR request template; and

  - providing more frequent updates on developments and trends in the ATR service at national tax forums.

The goal of this key change is to improve the quality of ATR submissions so as to avoid undue time delays.

- Amend the current 90-day service standard for ATRs to address complex tax policy issues that cannot typically be completed within a 90-day period, namely, those that require a formal referral to the CRA's General Anti-Avoidance Rule Committee, the Department of Finance or the Department of Justice.

  The goal of this key change is to set expectations for taxpayers upfront and provide them with a better indication of those ATRs that can be completed on a timelier basis.

- Develop guidelines for the provision of ATRs on questions of fact.

  Although some ATRs on questions of fact are currently provided, the goal of this key change is to provide a consistent approach within the Income Tax Rulings Directorate and to help manage expectations of users in respect of these types of ATRs.

- Develop guidelines for refusing to rule on the tax consequences of transactions for which there is little or no ambiguity and/or the position of the CRA is, or should be, well known to taxpayers.

  The goal of this key change is to help focus ATR requests on the real issues, with a view to making the process more efficient, less costly and timelier.

- Close an ATR file where the ATR request is not properly prepared or supported with adequate representations or where the taxpayer has not responded to a request for additional information within 30 calendar days.

  The goal of this key change is to thwart taxpayers from hurriedly submitting an incomplete submission in order to get an advantageous "spot in the queue." Once an ATR file is closed, a follow-up submission will not receive any greater priority than any other ATR requests.

Question 6. *Section 55(2) Guidance*

TEI members remain concerned about how revised subsection 55(2) and, in particular, the broad purpose test in subsection 55(2.1) will be administered. Please provide a summary of CRA's experience in addressing issues under these provisions, including examples of the type of rulings that are being granted and the kind of factual situations that have resulted in the CRA refusing to rule.

CRA RESPONSE

At the November 2015 TEI Conference Round Table, we provided the following message:

> Although paragraph 19(h) of IC70-6R6 indicates that the CRA will not issue an advance income tax ruling in situations involving primarily a factual determination, the CRA will consider issuing a favourable opinion under proposed subsection 55(2) where all manifestations of purpose and corroborating circumstances support the absence of one of the purposes described in proposed paragraph 55(2.1)(b). The opinion would be conditional on the representation made by the taxpayer that the purposes for which the dividend was paid do not include one of the purposes described in proposed paragraph 55(2.1)(b) and on the completeness of the description of all the manifestations of such purpose and corroborating circumstances.

[During the *CRA Income Tax Panel* at TEI's 50th Annual Canadian Tax Conference in May 2016], the CRA gave the following verbal message to the TEI:

> At the November 2015 TEI Conference, we outlined to you our understanding of the general application criteria for subsection 55(2) and our view of what would normally be involved in the determination of purpose for the application of subsection 55(2). We basically reassured the tax community that, to us, a purpose test is not a result test as we intend to follow the guidelines established in *Ludco* (2001 SCC 62) that "purpose" has to be objectively determined, guided by both subjective and objective manifestations of purposes. We also suggested that we would be open to consider rulings that involve the determination of purpose where taxpayers require some level of comfort regarding the application or non-application of subsection 55(2) to their proposed transactions. Other than rulings on loss-consolidation, we have NOT been deluged by requests for rulings on this topic. We would like to reiterate that we are "open for business" in that respect.

The message we are giving today is identical to the one that the CRA gave [in May 2016], after some 18 months. We would like to reiterate that we are open to issuing income tax rulings in the circumstances described at the November 2015 TEI Conference Round Table.

We would also like to inform you that we have met with some representatives of the Joint Committee on Taxation of the Canadian Bar Association and Chartered Professional Accountants of Canada on October 23 in Ottawa. The meeting was to discuss a deck of 96 slides that the Joint Committee has [sic] submitted to us before the summer on various perceived issues on section 55 and examples that illustrated such perceived issues. Some

issues that were raised were issues that existed with the old 55(2) regime and that may or may not be exacerbated by the new regime.

We informed the Joint Committee that, with respect to certain questions that were asked, we do not have further clarification to make since they have already been addressed by the CRA through various vehicles and forums (i.e., round tables, conferences and technical interpretations). Those were questions about calculation of safe income, creditor-proofing dividends, ordinary course dividends, safe income on discretionary dividend shares, same-class stock dividends, etc.

There was a second category of questions that will require further study and possibly some discussions with our colleagues of the Department of Finance and a response to those questions will be published in the following months in the form of technical interpretations. Those were questions on the impact of the application of 55(2) to the computation of cost, calculation of CDA, the GRIP, LRIP accounts and the application of 112(3).

Finally, there was a third category of questions that we found interesting and that required a quick response from the CRA in order to provide further guidance to the tax community. That third category of questions has been incorporated in the CRA Round Table Discussion of the 2017 Canadian Tax Foundation annual conference.

C. Administrative Matters

Question 1. *Withholding of Tax on Donation of Shares Acquired Through Stock Option Exercises*

An employer is generally required to withhold and remit tax on stock option benefits realized by an employee to the same extent as if the amount of the benefit had been paid to the employee as a cash bonus. However, an employer's withholding and remittance obligations do not generally extend to any portion of the benefit that is deductible by the employee under paragraph 110(1)(d) or under subsection 110(2.1). Subsection 153(1.01) expressly permits these two tax withholding exemptions.

With respect to the tax withholding exemption under subsection 110(2.1), upon the exercise of employee stock options, if the employee directs an employer-approved broker or dealer to immediately sell the shares and donate all or part of the proceeds to a qualifying charity, subsection 110(2.1) may entitle the employee to claim a tax deduction under paragraph 110(1)(d.01) proportionate to the amount of the donated proceeds. Unlike the case where shares are donated, subsection 153(1.01) specifically provides that the amount determined under paragraph 110(2.1)(b) to be deductible under paragraph 110(1)(d.01) will reduce the amount of the stock option benefit subject to withholding. In other words, the employer would not be required to withhold and remit tax on the portion of the cash proceeds donated to charity.

Under paragraph 110(1)(d.01), if an employee donates shares acquired in the exercise of employee stock options during the year, the shares are acquired and within 30 days of exercising the option, the employee is generally entitled to an additional tax deduction in an amount equal to one-half of the stock option benefit realized. Unlike the case where share sale proceeds are donated by an employer-appointed broker, subsection 153(1.01) does not explicitly provide for an employer withholding tax exemption in cases where after exercising options to acquire shares, the employee donates the acquired shares to a charity; technically speaking, withholding tax in respect of the stock option benefit realized on the exercise must still be collected and remitted.

In cases where an employer facilitates the donation of an employee's shares acquired upon the exercise of employee stock options by transferring such shares to a charity selected by the employee, would the CRA be open to providing an administrative concession whereby the employer could reduce the stock option benefit subject to withholding by an additional 50-percent deduction available under paragraph 110(1)(d.01)?

CRA RESPONSE

The CRA is not in a position to consider an administrative policy that excludes these transactions from withholding. Subsection 153(1.31) of the ITA specifies that the non-cash nature of a stock option benefit cannot reduce deductions at source. It is CRA's view that this change would require a legislative amendment and that this request would best be submitted to the Department of Finance for consideration.

Question 2. *CRA My Business Account*

a) *General Update on My Business Account*

The CRA My Business Account is a very useful tool for administering a taxpayer's tax accounts. The CRA continues to introduce new features to the online My Business Account system, making the system increasingly useful for taxpayers. TEI invites a discussion of the new features that were recently added to My Business Account and the CRA's plans for any additional features that may benefit large corporate taxpayers.

CRA RESPONSE

New [f]eatures that were recently added to CRA My Business Account include:

May 2017

Changes to RC59, Business [C]onsent, and RC321, Delegation of Authority forms – Form RC59, *Business Consent*, and Form RC321, *Delegation of Authority*, will no longer be used to grant online access. Representatives now need to complete an authorization request in

Represent a Client (RaC) or be authorized by owners through My Business Account to gain online access. The RC59 will still grant offline access.

View return details – Changes were made to the "view return status" page in the Payroll (RP), Information Returns (RZ), TFSA (RZ), and Contract payments (RZ) program account sections. The page now:

- Displays detailed summary data information
- Displays slip information details for each processed return
- Allows the user to select a return and individual slips to amend in Web Forms
- Allows the user to request a downloadable version of a return or slips – Recreate a Return as Filed.

October 2017

Account Balance and Activities – The existing "View account balance" and "View account transactions" links in the Payroll section were replaced by "Account balance and activities." All employers and their business representatives (level 1, 2 and 3) who have registered their payroll accounts under MyBA or RaC are able to view "Account balance and activities."

View return status – The "View return status" page name remains the same for the Corporate (RC) program accounts however, the page now features:

- The status of a return/reassessment
- Capability for session data to be shared by different applications within the secure portals. The user will no longer be required to navigate back the MyBA home page to select and view additional accounts within the T2 corporate Income tax program "View return status" service.

Capital Dividend Account Balance – [I]n "View return balances" page for RC accounts[,] CDA balances are now displayed in MyBA, and the CRA is converting years of data to be displayed in MyBA over the coming months. Of the estimated 300,000 accounts over 31,000 account CDA balance [sic] are now available on MyBA. A help page message that explains that accounts will be updated on an ongoing basis.

Autofill for T2 return – T2 autofill allows clients to download assessed returns and other data from the CRA directly into T2 tax preparation software. This is a one-way service only. The new T2 Auto-fill service is available to all T2 tax preparation software providers to implement into their software products. The CRA is working with all software vendors who request certification to implement the service.

The data that will be available as part of T2 Auto-fill includes:

- Assessed T2 Corporation Income Tax returns and schedules for the current plus previous four tax years
- When applicable, these balances will be available:

- Capital gains and losses
- Non-capital losses
- Refund dividend tax on hand
- General rate income pool
- Capital dividend account info
- Interim balance and account balance
- Current addresses on file (including up to 3 email addresses) and returned mail indicator (if one is set).

Submit PD24 – A PD24 is an application for refund of the employer's portion of CPP and EI overpayments. Employers and their representatives can now submit a PD24 in MyBA.

View Specialty Business Return/Refund – MyBA registrants now have the option to view a completed assessed return or refund that is saveable and printable. The view return or view refund option in MyBA is now available to paper and electronic filers.

Attach-a-doc through T2 Software – T2 tax preparers will be able to seamlessly send electronic documents to the CRA by attaching them via T2 tax preparation software. This service should be available for any T2-related document that would otherwise have to be sent as paper today. Attachments should be allowed both at the time of electronic filing of the T2 return, as well as during any time throughout the year. Corporations will be provided with a pick list of document types they can attach at the time of electronic filing of their T2 return. Examples include:

- Elections
- Director resolutions and agreements
- Provincial credit certificates (there are about 25)
- List of partnership account numbers
- Information slips (such as T4A – Statement of pension, retirement, annuity, and other income, or T5013 – Statement of partnership income)

Upcoming changes to MyBA that will benefit large corporation taxpayers:

FEBRUARY 2018

PIER (Pensionable and insurable earnings review) – The introduction of the new service in MyBA will:

- Display overview PIER cases
- Display a summary of PIER discrepancies
- Display a list of employees included in the PIER

With this change businesses, large or small, have access and the ability to respond to the report online. This change should translate into a cost savings and/or time saving for [e]mployers.

MAY 2018

Filing and balance confirmation letter – A new service will be introduced through the MyBA and RAC portals that will provide business owners and their authorized representatives the opportunity to self-generate an accessible electronic "Filing and balance confirmation letter" for their business accounts (RT, RC, RP, and OL programs). [It will] provide a summary of the program accounts, registration dates and any outstanding returns and balances associated to a particular Business Number.

Audit enquiries and Submit documents – The Audit enquiries feature allows businesses with an audit case number to submit questions about their audit and receive responses from an auditor electronically using My Business Account. The feature allows businesses to see all their audit-related questions and answers at a glance and to review previous messages using the "View audit enquiry history" function.

In the coming 2018–19 year, the following enhancements to the Audit enquiries feature will be made:

- Increase the outgoing file size limit (currently at 10 MB) when auditors are making audit documents available in the My Business Account for taxpayers/registrants.
- Increase the types of files accepted, including zip files. Currently, the file types available through the Audit enquiries feature are PDF and excel file types (xls, xlsx, xlsm and xlsb) only.

Future enhancements planned for 2019 are to provide the ability for taxpayers/registrants under audit and/or their authorized representatives to access and view their audit/compliance programs case information.

b) *Authorizing Online Access and Granting Delegation of Authority*

Form RC321, *Delegation of Authority*, allows a business to authorize a higher level than level 2, including changing the business's representatives, identification, and banking information—effectively allowing senior management to delegate the management of representatives and maintain their focus on delivering shareholder value.

Historically, the CRA's position has been to accept only Delegations of Authority signed by corporate directors. This position is problematic for large corporations that operate in Canada, in which most employees do not have access to board members for purposes of signing Form RC321. This "only directors can sign" rule appears reasonable only for small owner-managed companies; it unduly hampers the ability of large corporations to access their tax accounts.

We understand that the CRA was considering the extension of signing privileges to "corporate officers" for purposes of Form RC321, and was working towards implementing a new policy

and updating procedures, per its response to the Canadian Bar Association Commodity Tax Section annual review in February 2016. We appreciate that the CRA has been considering changes to make this process less cumbersome. Please provide an update on the planned changes. Is the CRA still considering extending the signing privileges to corporate officers?

We are concerned that the CRA has recently eliminated Form RC321 and delegations of authority may now be effected only through CRA's My Business Account. While we appreciate that the ability to complete a delegation of authority online may simplify the process for some taxpayers, we believe the paper form is still necessary for other taxpayers—especially large corporate taxpayers. Unfortunately, the decision to repeal the paper Form RC321 further exacerbates the burden on large corporations, which now requires a corporate director to log into My Business Account and delegate authority to individual(s). Large corporate taxpayers frequently have numerous entities within their corporate structures and significant numbers of people working on their tax files. In a large corporation, it is impracticable for a corporate director of a company to access each companies Business Account and enter delegations of authority for every entity and individual into the system. In addition, the corporate director would need to obtain a RepID to perform this process, which can be a cumbersome process requiring a significant commitment of the director's personal time. Would the CRA consider reinstating the paper Form RC321 to make the delegation-of-authority process workable for large corporate groups?

CRA RESPONSE

Since November of 2016 we had been accepting the signatures of corporate officers on authorization forms, including the RC321 and the electronic authorization certification page (including where level 3 delegated authority has been selected). As long as the names of the corporate officers are properly maintained by the corporation in the Business Number database, the system will accept the name and the signature in real time.

Since May 2017, the paper RC321 form has been discontinued permanently as it did not allow for any validation of the corporate director/corporate officers name. Through CRA's Electronic Authorization for Business process the name is automatically validated with what the CRA has on record and will allow the delegation of authority to be processed without delay.

Regarding [TEI's comment that] "the decision to repeal the paper Form RC321 further exacerbates the burden on large corporations, which now requires a corporate director to log into My Business Account and delegate authority to individual(s)": It's important to clarify that corporate directors/officers are actually not required to log into the portal to complete the process. Instead, any person with a RepID can log in to represent a Client to complete the web form. As usual, the corporate director/officer of the corporation only needs to sign the certification page generated by the system, replacing their need to sign an RC321 form.

c) *Accessing Non-Resident Accounts*

Currently, a taxpayer's non-resident accounts are not included in My Business Account and there is no equivalent "Delegation of Authority." Without this feature, a taxpayer must follow the more cumbersome process outlined on the CRA's website:[2]

> **To authorize a representative** for your non-resident account or **to make changes** to representative information, you have to sign a letter of authorization and send it to us.
>
> Your letter of authorization has to show:
> - your non-resident account number;
> - your name;
> - the name of your representative, with his or her address and telephone number; and
> - a statement from you or an authorized officer to let the CRA release your information.
>
> **Note**
> For a company, your letter should be on company letterhead, signed by an authorized officer.
>
> **To cancel** an authorization, you can phone or fax the CRA, or send your request to the Non-Resident Withholding Division in writing.
>
> **Note**
> You cannot use Form T1013, *Authorizing or Cancelling a Representative*, or Form RC59, *Business Consent*, to authorize or cancel a representative for a non-resident account. Also, representatives cannot use the Represent a Client service for non-resident accounts.

Would the CRA consider adding the management of non-resident accounts to My Business Account to make the process consistent with other CRA accounts?

CRA RESPONSE

The CRA is currently working to improve services for non-resident accounts. While it is not presently possible to manage non-resident tax accounts through My Business Account, one of the Agency's current projects—the Non-Resident Source Deductions Identification

[2] https://www.canada.ca/en/revenue-agency/services/tax/international-non-residents/payments-non-residents/nr4-part-xiii-tax/representatives-non-resident-accounts.html

Project—will implement an online registration process for new non-resident tax accounts. This service will be accessible in October 2018 to those who have access to My Business Account and My Account.

This project will also make it possible to explore additional electronic service options for non-resident accounts in the future. The project will also introduce a new form to authorize representatives for non-resident tax accounts in May 2018. It will be consistent with existing authorization forms, such as Form T1013, *Authorizing or Cancelling a Representative*, and Form RC59, *Business Consent*.

Question 3. *Regulation 105 Waivers*

Transactions otherwise subject to Regulation 105 withholding may be subject to a reduction or exemption from the withholding at the discretion of the CRA, pursuant to subsection 153(1.1), where a non-resident can demonstrate, based on treaty protection or estimated income and expenses, that the normally required 15-percent withholding is in excess of the ultimate tax liability. Form R105, *Regulation 105 Waiver Application*, must be completed by the non-resident person and submitted to apply for a waiver from withholding, and the form asks to specify the currency (e.g., Section II, Box 13 – total fees and currency guaranteed to be paid to the applicant as per the current contract). The amounts which are paid to non-residents for services performed in Canada must be reported on Form T4A-NR in Canadian dollars ("CAD"), even if they were paid in another currency.

Some of our members have experienced administrative difficulties with the existing process for Regulation 105 waivers and Form T4A-NR reporting with respect to the foreign currency used for reporting. Where a Canadian corporation (the "Taxpayer"), has elected to file its Form T2, *Corporate Income Tax Return*, in a functional currency other than CAD in accordance with section 261, and the payments to the non-resident that are subject to Regulation 105 withholding are also in the Taxpayer's elected functional currency, it is frequently unclear whether the waiver has been granted to the Taxpayer in its elected functional currency, or in CAD. The requirement for the Taxpayer that has filed a functional currency election to report amounts on Form T4A-NR in CAD may also cause unnecessary confusion and can lead to unwarranted incremental tax costs.

For example, assume a non-resident provides services to the Canadian Taxpayer and requests an income and expense waiver in the amount of $10 million (USD). Assume further that the non-resident receives an accepted waiver from the CRA for $10 million, where the currency is not specified. The non-resident and the Taxpayer mistakenly believe the waiver has been granted in USD (the non-resident because it requested the waiver in USD to match the USD-denominated physical payment it received for services rendered in Canada, and the Taxpayer because it filed a functional currency election to report in USD). The CRA, on the other hand, assumes the opposite and believes the $10 million waiver is in CAD. By year end, assume the Taxpayer has made total payments to the non-resident of $10 million (USD) and does not

withhold amounts under Regulation 105, as the Taxpayer believes its payments are within the threshold of the waiver. The CRA, on the other hand, believes the waiver was issued for $10 million (CAD) and, if the relevant exchange rate is determined to be $1 (USD) = $1.30 (CAD), the payments to the non-resident have exceeded the waiver amount by $3 million (CAD)—$10 million (USD) × 1.3 = $13 million (CAD) – $10 million (CAD) waiver amount. As a result of the misunderstanding on the currency denomination for the waiver, the Taxpayer may now be required to withhold an incremental amount of $450,000 (CAD), or $3 million (CAD) × 15%), and also be subject to interest and penalties because of late remittance to the CRA.

To provide greater clarity for taxpayers in this process, we request that the CRA consider the following:

a) Add a drop-down box to Form T4A-NR asking the filer to specify the currency to be reported on the form (similar to the NR4 Reporting form). The CRA Guide RC-4445 could also be modified to describe this change. This may alleviate some of the confusion when comparing the amount that is reported on Form T4A-NR to the amount that is reported on the Regulation 105 waiver granted by the CRA.

CRA RESPONSE

InfoDec Development and Information Returns Programs would be involved from a construction perspective and the need to update specifications and schemas. We can take the suggestion into consideration, but given that the deadline for submitting requirements for 2019 has passed, the earliest it could be considered is for 2020. We would have to consult with other areas in the CRA to determine if there are any other impacts and what benefits there are for the Agency, in order to prioritize it with the other work in InfoDec Development.

b) In some circumstances, Regulation 105 waivers have been provided by the CRA but have not specified the currency that applies to the waiver amount. Could the CRA make it their practice to identify the currency that is applicable to the waiver amount to provide clarity to both the Taxpayer and the CRA (especially if a currency other than the Canadian dollar was specified on the waiver application)?

CRA RESPONSE

We agree that there have been instances where the currency that applies to the waiver amount has not been clearly indicated on the waiver letter and in future we will take steps to ensure all waiver letters identify the currency of the waiver amount.

D. Audit/Appeal Matters

Question 1. *Auditor General's Report: Report 2, Income Tax Objections*

In the fall of 2016, the Office of the Auditor General of Canada released its report (the "Report") on the CRA's management of income tax objections. The Report sets out a number of recommendations focused on improving the time the CRA takes to provide taxpayers with decisions on their objections and the sharing of those decisions within the CRA. In response to the Report, the Minister of National Revenue stated that an action plan was underway to reduce processing times and the plan would be ready at the beginning of 2017.

Low- and medium-complexity objections have been a significant focus of the CRA's action plans announced to date. Please share details of the action plan and the impact it is expected to have on the objection process for large corporations with more complex objections.

CRA RESPONSE

A number of actions have been implemented by the Agency in response to the Report, as well as to the follow-up recommendations by the House of Commons'[s] Standing Committee on Public Accounts.

From the taxpayers' perspective, the Agency has taken steps to provide greater clarity as to timeliness of decisions on low- and medium-complexity objections, such as:

- the creation of new performance indicators that take into consideration all of the time that objections are within the control of the Government of Canada
- a new service standard to strive towards the resolution of low-complexity objections within 180 days of mailing, 80% of the time, was introduced on April 1, 2017[,] and the Agency is on track to meet this target before the end of the fiscal year
- the publication of information about assignment and resolution of low-complexity objections on the CRA website, together with assignment times for medium-complexity objections; the latter will be followed by resolution timelines for medium-complexity objections in December
- The Agency will introduce another service standard targeting the resolution of medium-complexity objections within 365 days of mailing, 80% of the time, on April 1, 2018.

In addition to the measures taken above, the Agency has launched a campaign to encourage taxpayers to use other appropriate channels to resolve tax issues prior to filing an objection. In order to clarify the channels available to them, depending on the nature of their dispute, a decision tree has been made available to taxpayers and their representatives on the CRA website pages, IT Objection [https://www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/complaints-disputes/income-tax.html] and GST/HST Objection

[https://www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/complaints-disputes/goods-services-tax-harmonized-sales-tax-gst-hst.html].

To increase efficiency and provide taxpayers with more seamless service and more timely decisions, the Appeals Branch continues to increase the specialization of the way in which its workloads are processed. Within this context, it has implemented a triage system for low-complexity objections that ensures that taxpayers are contacted at the earliest point in the process to request any necessary details or documentation that might not have been included when their objection was filed, and which will assist in its prompt resolution. The concept and lessons learned from this implementation will be applied to the medium-complexity workload going forward.

In an effort to identify further opportunities for improvement in the service provided to Canadians, the Appeals Branch is conducting process reviews of all elements of its Objections workload, and is sharing decisions on objections with the Agency's assessing, verification and audit programs to maintain the highest standards of application of both policy and law. The Agency will be reviewing processes used by the Agency to address large-file objections starting January 2018. As part of this review, the Appeals Branch will be engaging multiple Canadian Tax Professional Associations to solicit input from tax practitioners.

Any efficiencies identified and gains obtained from the reviews and improvements to the low- and medium-complexity workloads will also be applied to the high-complexity workload as well.

Question 2. *Audit Proposals*

The CRA's Audit Manual states in respect of proposal letters that, "[i]n all cases, it is essential that the taxpayer receive a full explanation of the proposed adjustments and is given an adequate opportunity to respond." Some of our members have received income tax reassessments based on proposal letters where the CRA fails to set out the relevant facts, assumptions, or any explanation for its adjustments. It is very challenging for large corporations to comply with the large corporation rule in subsection 165(1.11) in filing a notice of objection if all adjustments are not explained to the taxpayer, as the taxpayer would not have a full understanding of each issue to be decided. Please comment on what should be included as a "full explanation of proposed adjustments," and what the internal procedure is for ensuring that proposal letters describe all proposed adjustments. Please explain the steps taxpayers should take if they receive a proposal letter that does not explain an adjustment and the audit team has failed to address the adjustments upon request from the taxpayer. The CRA has commented that taxpayers should escalate matters within the CRA if appropriate; however, some taxpayers have experienced difficulty in doing so. Please comment on the process for escalation and when Headquarters should get involved in a matter.

CRA RESPONSE

The approach to audit proposal letters varies depending on whether the taxpayer is part of the large file population or the small and medium file population.

CRA International and Large Business Case Managers (ILBCM) and auditors should provide clear and concise proposal letters. Each audit adjustment being proposed should be listed or itemized, and include a detailed description of the adjustment with a corresponding reference to the relevant provision(s) of the [Act]. The proposal letter should also clearly outline the length of time provided to the taxpayer to respond to the proposal letter, and a contact name if the taxpayer has additional questions or requires further explanation. Generally proposal letters are approved by the ILBCMs. In some cases the letters are also reviewed by the Section Manager and by one of the Headquarters (HQ) technical groups to ensure conciseness, technical accuracy, and quality. The CRA also performs an audit quality review function to select cases for review and to make recommendations for improving audit file quality.

If the proposal letter does not adequately explain an adjustment, and the ILBCM or auditor has not addressed the concerns raised by the taxpayer or representative, the taxpayer can elevate their concerns within the CRA by contacting first the Assistant Director of Audit (ADA) of the Tax Service Office (TSO), then the Director of the TSO, and if necessary the Director General, International and Large Business Directorate in HQ.

For audits of the small and medium enterprises (SME), all proposal and final letters prepared by SME auditors are reviewed by their team leaders to ensure accuracy and completeness. If a taxpayer is unsatisfied with the explanations the auditor has provided for reassessment, the SME audit team leader should be contacted. If that interaction is unsatisfactory, the team leader's manager or Assistant Director of Audit at the local office should be contacted. Failure to resolve at that level could involve an escalation to the Director of the local office.

Question 3. *GAAR*

On filing a Notice of Objection, anecdotal evidence with the GAAR suggests that absent new information, the GAAR assessment is often maintained by the Appeals officer and is always subject to head office review. Does the CRA have statistics available on the success and failure rates of GAAR with the CRA Appeals division?

CRA RESPONSE

The CRA is committed to proving a fair and impartial review of all tax disputes and, to ensure consistency in the application of the legislation, it is a requirement that an objection involving the [GAAR] provisions be referred to Headquarters in the Appeals Branch. As

with any objection treated by an Appeals officer, the situation is reviewed on its own merit and there is no requirement for new evidence to be provided for an objection to be reversed.

While the CRA does not track the success and failure rates of GAAR assessments that have been reviewed by its Appeals Branch, it may be of interest to know that, as of 2016–2017, information is outlined in the Reporting Compliance portion of the 2016–2017 Departmental Performance Report with respect to the mandatory referrals within the Audit program. Between the inception of the GAAR on September 13, 1988[,] and March 31, 2017, the provision has been applied to 1,093 files, representing 79% of the files referred. It is also notable that, of the total number of files where the CRA has applied the GAAR, 66 files, or 6%, were appealed to the judiciary system.

E. Technical Matters

Question 1. *New Revenue Recognition Reporting Rules*

Effective January 1, 2018, IASB International Financial Reporting Standard ("IFRS") 15, *Revenue from Contracts with Customers*, and FASB Update No. 2014-09, *Revenue from Contracts with Customers (Topic 606)*, will implement significant changes to how enterprises recognize revenue under IFRS and U.S. GAAP, respectively. The changes signal a move from a focus on risks and rewards to one that better matches the enterprise's meeting of performance obligations under certain contracts and that reflects the implicit financing components of those projects. Please comment on CRA's efforts to assess the impact of this accounting change on the determination of net income for tax purposes.

CRA RESPONSE

As expressed by the CRA in previous forums with regards to the change in accounting standards from previous Canadian GAAP to IFRS, the [Act] does not specify that financial statements must be prepared following any particular type of accounting principles or standards to determine profit. As the Supreme Court of Canada ("SCC") stated in *Canderel Limited. v. The Queen*[,] 98 DTC 6100, the determination of profit is a question of law. Accounting standards are not law. In seeking to ascertain profit, the goal is to obtain an accurate picture of the taxpayer's profit, for purposes of section 3 of the Act for the given year. The SCC stated that a taxpayer is free to adopt any method which is not inconsistent with: (a) the provisions of the Act; (b) established case law principles; and (c) well-accepted business principles.

The CRA is reviewing the possible impacts of IFRS 15, *Revenue from Contracts with Customers*, on the reporting of income for income tax purposes is it applies to certain industries and to taxpayers overall. The CRA will communicate on these possible impacts in the coming months.

Question 2. *Foreign Exchange Rates for Multijurisdictional Transactions*

[Reserved.]

Question 3. *Section 116 Procedures for Tax-Deferred Dispositions of Taxable Canadian Property on Foreign Mergers*

On September 16, 2016, the Department of Finance released draft legislation to provide a mechanism for deferral of recognition of gains and losses from dispositions of shares of Canadian-resident corporations caused by certain foreign mergers, provided such shares are "taxable Canadian property" ("TCP") and do not constitute "treaty-protected property." The proposed measures, if enacted in current form, would be incorporated as subsections 87(8.4) and (8.5), respectively, and would apply to foreign mergers occurring on or after September 16, 2016. In general terms, provided the conditions in proposed subsection 87(8.4) are met, a "subject share" will be deemed to have been disposed by the "disposing predecessor foreign corporation" to the "new corporation" resulting from the foreign merger for proceeds of disposition equal to the adjusted cost base of the subject share to the disposing predecessor foreign corporation immediately before the foreign merger. The new corporation will be deemed to have a cost in the subject share equal to such proceeds of disposition.

In respect of the draft legislation, we would appreciate the CRA's comments regarding the following:

a) Under proposed subsection 87(8.4), the new corporation and the disposing predecessor foreign corporation must make a joint election in accordance with prescribed rules. For foreign mergers occurring after September 16, 2016, will the CRA accept elections for the tax-deferred treatment of dispositions under proposed subsection 87(8.5) prior to enactment of the legislation?

CRA RESPONSE

The revised wording in draft paragraph 87(8.4)(e) of Bill C-63 no longer states that the joint election is to be made in accordance with prescribed rules. Rather the revised wording indicates that the joint election is to be made in writing and filed within certain specified timeframes.

It has been the CRA's longstanding practice to generally ask taxpayers to file on the basis of proposed legislation. Consequently, for foreign mergers occurring after September 15, 2016[,] but prior to the enactment of proposed subsections 87(8.4) and 87(8.5), the CRA would accept elections properly made pursuant to proposed paragraph 87(8.4)(e). However, we would also note that the coming into force provisions for subsections 87(8.4) and (8.5) in Bill C-63 state that a joint election made pursuant to paragraph 87(8.4)(e) will be deemed to have been filed on a timely

basis if it is filed on or before the day that is six months after the day on which draft proposals of subsections 87(8.4) and (8.5) in Bill C-63 receive Royal Assent.

b) Please provide guidance on the manner of and form for making the joint election in proposed paragraph 87(8.4)(e).

CRA RESPONSE

Bill C-63 states that the joint election is to be made in writing. In the CRA's view, it would be acceptable that this election in writing be made in the form of a letter.

As stated in Bill C-63, the joint election is to be filed on or before the filing-due date [sic] of the disposing predecessor foreign corporation (or the date that would be its filing-due date if subsection (8.5) did not apply to provide for a tax-deferred disposition) for the taxation year that includes the time of the disposition.

c) A disposition of a subject share, as described in proposed subsection 87(8.4), would, in most circumstances, be subject to the provisions of section 116 of the Act. Will the CRA extend its position in paragraph 1.82 of Income Tax Folio S4-F7-C1, *Amalgamations of Canadian Corporations*, to dispositions of subject shares for which elections will be made under proposed paragraph 87(8.4)(e)? The extension of the position is justified because a subject share will, despite the absence of a "deemed TCP" rule like the one in the post-amble of subsection 87(4), continue to be taxable Canadian property for a period of five years after its disposition on the foreign merger as the value of a subject share would have to be derived principally from Canadian real property interests at the time of the foreign merger in order to fall within the scope of the proposed legislation.

CRA RESPONSE

The CRA is not prepared at this time to extend the narrow administrative concession to the new proposed legislative measures in subsections 87(8.4) and (8.5). Therefore, where a foreign merger results in a disposition of TCP by a predecessor foreign corporation, the taxpayer should comply with the requirements in section 116.

d) If the CRA is not prepared to extend the position to exempt dispositions of subject shares from section 116 notification procedures, please provide guidance on how the CRA will review notifications for dispositions of subject shares submitted prior to the enactment of the proposed legislation. Specifically, would CRA be prepared to issue clearance certificates in respect of a disposition of subject shares on the basis that the proceeds of disposition of the subject shares will be equal to their adjusted cost base to the disposing predecessor foreign corporation? Given that the proceeds of disposition for the subject shares will be deemed to be equal to their adjusted cost base to the disposing predecessor foreign corporation, will the CRA require a valuation of the

subject shares to be submitted with the notification in order to issue clearance certificates?

CRA RESPONSE

For foreign mergers occurring after September 15, 2016[,] but prior to the enactment of the proposed subsections 87(8.4) and (8.5), the CRA would generally be prepared to issue certificates of compliance on the basis that the proceeds of disposition for the shares disposed of on the merger are equal to their adjusted cost base to the disposing predecessor foreign corporation, provided an otherwise valid joint election under proposed paragraph 87(8.4)(e) is made in respect of the disposition.

For dispositions of shares in respect of which a valid joint election is made pursuant to proposed paragraph 87(8.4)(e) the CRA would generally not require that documentation be initially filed with the section 116 notification to support the fair market value of the shares on the date of the transaction in order to issue a certificate of compliance under section 116. The CRA would, however, require documentation to support the adjusted cost base of the shares to the disposing predecessor foreign corporation.

Pursuant to the October 25, 2017[,] draft proposals and Bill C-63, the above response would also apply for section 116 purposes in connection with valid joint elections that are filed in connection with partnership and trust interests.

Question 4. *Waiver of Requirement to File NR4 Returns for Exempt Payments*

In Technical Interpretation 2015-0608201E5 (Dec. 22, 2016), the CRA indicated that it is no longer waiving the requirement to file NR4 returns for amounts paid by residents of Canada to non-residents if the amounts are not subject to withholding tax. The CRA also says that a waiver under subsection 220(2.1) is not available to exempt the NR4 filing obligation. During the CRA roundtable at the International Fiscal Association's 2017 annual tax conference, the CRA confirmed its new position that a taxpayer must file a NR4 return to report payments not otherwise subject to withholding tax, such as arm's-length interest. The CRA said that it is not a question of whether an amount is subject to that tax, but whether the amount is described in Regulation 202(1). The CRA said that an arm's-length interest payment to a non-resident must therefore be reported on a NR4 slip even if the payment is not subject to part XIII withholding tax. The CRA confirmed that it has not exercised its discretion to waive the requirement to file the NR4 (subsection 220(2.1)).

Therefore, for example, Canadian residents who are paying interest to an arm's length foreign bank would have to file NR4, even though the interest payment is clearly fully exempted from withholding taxes under 212(1)(b). This change in CRA's position seems contrary to the

Government of Canada key priority of cutting red tape, as this increases the administrative burden of Canadian taxpayers without adding any value.

TEI members would benefit from an explanation as to why the CRA has changed its long-standing practice of waiving the filing requirement of the NR4 when the amounts paid to non-residents are exempt of withholding taxes, since under subsection 220(2.1), it is contemplated that the Minister may waive the filing requirement of a prescribed form and the taxpayer is obligated to provide the document or the information at the Minister's request.

Would CRA consider reinstating its long-standing practice of waiving the requirement to file NR4 returns for amounts paid by residents of Canada to non-residents if the amounts are not subject to withholding tax?

CRA RESPONSE

The CRA has never waived the requirement to file an NR4 information return for amounts paid by residents of Canada to non-residents if the amounts are not subject to withholding tax. Regulation 202(1) requires that an information return must be made in prescribed form (NR4) when a person pays or credits any amount under Part XIII of the [Act].

Question 5. *QNRE Certifications and Program Progress*

In early 2016, the CRA released Form RC473 and thereafter began to accept applications and provide certifications of "qualifying non-resident employers" ("QNREs") pursuant to subsection 153(7) (the "R102 Program").

During last year's liaison meeting with TEI, the CRA indicated that the R102 Program was successful in terms of both the number of applications received and the certifications provided. Please provide a general update on the progress of the R102 Program, and specifically address the following points:

a) How many Form RC473 applications has CRA received to date, and how many of those applications have resulted in certifications being issued?

CRA RESPONSE

Since the implementation of the non-resident employer certification program in January 2016, approximately 2,500 applications have been received. Less than 20 applicants were not certified due to incomplete applications that were not resolved by the non-resident employer upon follow up.

b) Are there any areas on Form RC473 where CRA has noticed applicants having difficulty providing satisfactory information? If so, please provide details.

CRA RESPONSE

Yes. We have noticed that the certification section (Section 5) of the form is not being signed by an "authorized signing officer" of the employer but rather by an individual who is an "authorized representative" of the employer. This form must be signed by an individual with proper authority for the business (e.g. an owner, a partner of a partnership, a corporate director or treasurer, an officer of a non-profit organization, or an individual with delegated authority). An authorized representative cannot sign this form unless they have delegated authority. This results in delays as the authorized representative must then have the non-resident employer resubmit the form.

c) Section 2 of Form RC473 requests the applicant to check "yes" or "no" in respect of two questions pertaining to "the previous certification period." Could the CRA confirm that this section is not required to be completed for first-time Form RC473 applicants, since they would not have had a previous certification period? We note that a prior version of this form included an option to check "N/A."

CRA RESPONSE

Yes, we can confirm that these two questions (#11 and #12) apply only to employers who were previously certified and not for first-time applicants. We will clarify this in a spring update of the form.

d) Has CRA revoked any QNRE certifications pursuant to its authority under paragraph 153(7)(b)? If so, please provide examples of situations where the CRA has revoked a certification, as well as the approach the CRA has applied in such circumstances to a person's liability for any R102 Program tax remittances required and potential interest or penalties related thereto.

CRA RESPONSE

We have yet to revoke any certifications. Our position remains that the non-resident employer who has had their certification revoked may become liable to withhold and remit taxes for the entire certification period depending on the circumstances of the revocation.

e) Under the heading, *Obligations of a Qualifying Non-Resident Employer*, on Form RC473, there are seven separate bullet points outlining obligations which must be adhered to by any person so certified. Has the CRA conducted any audits, inspections or reviews of QNREs and their compliance with those obligations? If so:

i. What types of books and records has the CRA requested for inspection in Canada?

ii. Please provide any general observations as to what the CRA has found in the course of its audits, inspections or reviews of QNREs.

CRA RESPONSE

The CRA has conducted over 400 post certification reviews to date of non-resident employers to ensure they are complying with their certification conditions.

Employers were asked to provide employee names, income earned by the employees, the dates the non-resident employees were in Canada, the residency of their employee and under what treaty provision their employee was exempt. Information was mostly provided in a worksheet format. The review was to ensure that the employer was meeting their obligations and to ensure proper documenting.

Some employers required more time to respond to our request for information but generally speaking there were no issues.

f) The CRA indicates on its website that it will not consider a person's compliance history with its withholding, remitting, and reporting obligations when it reviews an initial application to become certified as a qualifying non-resident employer, but it confirms that becoming certified as a qualifying non-resident employer does not cancel any liability such person may have related to any such prior obligations. That statement is consistent with what TEI members were told in meetings with senior officials from the CRA and the Department of Finance in 2015. Given that it has now been close to two years since these revisions to the R102 Program, has the CRA seen anything on a Form RC473 application that has caused it to deviate from its statement of policy in this regard?

CRA RESPONSE

Our position on this issue remains the same and we have had no reason to deviate from our stated policy posted on our website. An employer's compliance history with their withholding obligations will not be a factor when reviewing and processing an initial certification application. However, we do encourage that an employer does come forward and make a VDP if they have any outstanding withholding obligations prior to be certified.

In the case where an employer has any outstanding withholding obligations that are determined to be both material and egregious, the CRA may decide to audit those years prior to certification if a voluntary disclosure is not made.

g) We understand the CRA has indicated verbally that it would not enforce the requirement that Form T4 contain a SIN or ITN in respect of a qualifying non-resident employee if Form T4 is being filed solely to comply with the R102 Program. Can the CRA confirm its position in this regard?

CRA RESPONSE

We have always said that an employer's certification status will not be affected or revoked if they do not provide a SIN or an ITN on a qualifying employee's T4 slip. That said, the employer should ask the employee if they already have an ITN or a SIN and provide it the employer. I am not aware of any enforcement action that is taking place with this type of filing but we will be working with our colleagues in the Information Returns area to identify QNREE T4s.

h) It is a very onerous process for larger multinational organizations with many legal entities situated in various countries to prepare Forms RC473 for all entities that wish to become a QNRE in the group. In such situations, would the CRA consider instituting a process whereby it would accept a single Form RC473 from a "group parent" entity which would list all of that entity's related QNREs in a schedule thereto, such that the certification would apply to all listed entities as well as the group parent?

CRA RESPONSE

We are currently examining these types of situations and are considering the development of a policy to address the issue of several related entities. Once we have a firm policy in place we will update the instructions for completing the RC473 form and update our web pages.