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October 28, 2019

Mr. Bob Hamilton  
Commissioner of Revenue  
555 MacKenzie Avenue, 7th Floor  
Ottawa, Ontario K1A 0L5  
Canada

By Federal Express

**Re: Questions and Comments for December 10, 2019 Liaison Meeting**

Dear Commissioner Hamilton:

On behalf of Tax Executives Institute Inc. ("TEI"), I am pleased to enclose TEI's questions and comments on income tax matters for discussion with representatives of the Canada Revenue Agency ("CRA") during our liaison meeting on December 10, 2019. The meeting will be held that morning in the Drawing Room of the Fairmont Château Laurier hotel in Ottawa at approximately 8:30 a.m. (EST).

To facilitate distribution of the enclosed questions and comments among CRA personnel, an electronic (PDF) file containing these agenda items is being transmitted by e-mail to Mr. Costa Dimitrakopoulos, Director General, Income Tax Rulings Directorate, and Ms. Kimberly Duval, Rulings Officer, by Watson M. McLeish, TEI Tax Counsel. Kurtis L. Bond, Chair of TEI's Canadian Income Tax Committee, will follow up directly with the appropriate CRA personnel to discuss any questions or comments that may require clarification. Should you have any questions about the agenda in advance of the meeting, please do not hesitate to contact Mr. Bond at (403) 260-1156 or Kurtis.L.Bond@conocophillips.com.

TEI appreciates this opportunity to present our income tax questions and comments. We look forward to meeting and discussing our views with the CRA on the morning of December 10, 2019.

Respectfully submitted,

Katrina H. Welch  
International President

Copies: Costa Dimitrakopoulos, Director General, Income Tax Rulings Directorate  
Kimberly Duval, Rulings Officer, Income Tax Rulings Directorate  
Josephine Scalia, TEI Vice President for Canadian Affairs  
Kurtis L. Bond, Chair, TEI's Canadian Income Tax Committee  
Watson M. McLeish, TEI Tax Counsel

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**TAX EXECUTIVES INSTITUTE, INC.**

**INCOME TAX QUESTIONS**

**Submitted to**

**CANADA REVENUE AGENCY**

**DECEMBER 10, 2019**

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Tax Executives Institute, Inc. ("TEI") welcomes the opportunity to present the following questions and comments on income tax issues, which will be discussed with representatives of the Canada Revenue Agency ("CRA") during our liaison meeting on December 10, 2019. Should you have any questions about the agenda in advance of the meeting, please contact Josephine Scalia, TEI's Vice President for Canadian Affairs, at (514) 205-6243, or Kurtis L. Bond, Chair of TEI's Canadian Income Tax Committee, at (403) 260-1156.

**A. Introduction**

**Question 1.** *Vision for the CRA's International and Large Business Directorate*

We invite the Director General of the CRA's International and Large Business Directorate to provide an update regarding her thoughts on the vision for the Directorate's future and how TEI might help realize that vision.

**Question 2.** *Public Consultations*

TEI applauds the CRA for engaging in a number of public consultations on various topics in recent years.

- a) We would appreciate an update from the CRA regarding its public consultations, including: (1) the outcomes of recently completed consultations; (2) the status of any ongoing consultations; and (3) topics that might be addressed in future consultations.
- b) TEI's IRS Administrative Affairs Committee formed a working group in 2015 to evaluate audit experiences and best practices in examinations of transfer pricing issues, with the goal of sharing our findings with the U.S. Internal Revenue Service ("IRS") and collaborating with the government to improve the transfer pricing examination process. Would the CRA be amenable to engaging with members of TEI's Canadian Income Tax

Committee in a similar collaborative effort to improve the transfer pricing examinations process in Canada?

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

### **Question 1. *Technology at the CRA***

Last year, TEI asked the following of the CRA:

Technology is front and centre in the current environment. TEI is interested to understand how the CRA is currently using technology to improve its processes, and how the CRA envisions technology impacting income tax audits over the next three to five years. We would also appreciate the CRA's thoughts regarding the involvement of large business taxpayers in its technological development, and the role that TEI can play in helping the CRA achieve its technology development goals.

We would appreciate an update regarding the CRA's use of technology, including discussion of the following:

#### Part A

Multinational corporations increasingly encounter different approaches to the application of technology by tax authorities around the world in how they access and analyze taxpayer data for audit purposes. Given the shared desires of government and taxpayers to bring audits current and see them conducted more efficiently, can the CRA comment on whether it plans to change how it accesses taxpayers' electronic data and, if so, how such data would be accessed, used, maintained (i.e., protected against unauthorized access), and shared (e.g., within the CRA, with other tax authorities)?

#### Part B

In December 2017, the CRA provided a comprehensive response to TEI's question regarding completed and planned enhancements to the CRA's online "My Business Account" system. TEI invites the CRA to provide an overall update regarding its efforts to improve the online experience for corporate taxpayers. We further invite the CRA to provide specific updates with respect to each of the following:

- a) *Implementation of access to the non-resident account information by taxpayers through My Business Account*
- b) *Improved tracing ability for transfers of money between accounts* – Payment transfers between taxation years, and sometimes between program accounts, are not currently displayed in

My Business Account. For example, if a taxpayer were to transfer a 2018 installment payment to the 2019 installment account, My Business Account would not show a transfer. Instead, it would report a payment only to the 2019 taxation year without any indication that the payment was originally credited to the 2018 year. The absence of a “paper trail” causes problems for taxpayers both in tracking payments and satisfying internal corporate governance controls, especially for large corporate groups with multiple payment transfers between various accounts. Could the CRA add functionality in My Business Account to display payment transfers between taxation years and between accounts or extensions?

- c) *Automatic availability of statements of interest for each Notice of (Re)assessment* – At present, statements of interest are not typically issued with a Notice of (Re)Assessment, requiring taxpayers to separately request such statements and wait for their requests to be fulfilled. Would the CRA consider automatically issuing a statement of interest with each Notice of (Re)assessment?
- d) *Availability of online services for mutual fund trusts* – In November 2016, TEI requested an update on the availability of online services to mutual fund trusts. The CRA responded that trusts, including mutual fund trusts, with no taxable income, tax payable, or refundable credits would be able to electronically file Form T3RET, *T3 Trust Income Tax and Information Return*, beginning in January 2018. One year later, in response to TEI’s follow-up question on this matter, the CRA indicated that it was no longer able to commit to a timeline for the expansion of electronic services due to the government’s shift in focus toward improving the collection of beneficial ownership information. Given the passage of time since our initial inquiry, TEI respectfully renews its request for a status update regarding the availability of online services to mutual fund trusts. We would also appreciate an update from the CRA concerning the prospective introduction of T3 self-service portal options.
- e) *Online service availability for RZ accounts* – It can be difficult for taxpayers to track multiple (re)assessments generated in a taxation year with respect to their information returns program (RZ) account for filings such as Forms T5008 and T5. TEI believes that the tracking of these (re)assessments and related payments would be vastly improved if the CRA were to include a statement of account in My Business Account similar to what is available for RC, RP, & RT accounts. Would the CRA consider implementing such an enhancement?
- f) *Managing owner information in My Business Account* – The Business Profile section of My Business Account now includes the names and telephone numbers of owners under “Manage owner(s) phone number(s).” Some TEI members have noted that the names of the owners are not current and can be more than one year out of date. Not having the most current information can lead to confidential CRA correspondence going to individuals who are no longer associated with the taxpayer. In addition, obtaining

Level 3 or offline authorization for individuals can be delayed when CRA is checking authorizations against an out-of-date list. In some instances, taxpayers will provide signed Certificates of Incumbency along with an authorization request to provide the most current list and expedite the process, but CRA still checks them against its potentially out-of-date list. TEI invites the CRA to (i) outline its current procedures to obtain director and officer information, and (ii) discuss what improvements it could implement to become more current and address these concerns.

**Question 2.** *Benefits and Allowances Received from Employment*

Since October 2017, Income Tax Folio S2-F3-C2, *Benefits and Allowances Received from Employment*, has been “under review” and the CRA has directed employers to follow current practices consistent with the information available in Guide T4130, *Employers’ Guide - Taxable Benefits and Allowances*. In response to TEI’s December 2018 question on this subject, the CRA indicated that it had reviewed and revised the folio’s wording with respect to employee discounts on merchandise, but that the revised folio continued to undergo additional review pursuant to internal CRA procedures. TEI invites the CRA to provide an update regarding the status of this additional review and the projected release date of the revised folio.

**Question 3.** *QNRE Certifications and Program Progress*

The CRA released Form RC473, *Application for Non-Resident Employer Certification*, in early 2016 and thereafter began to accept applications and provide certifications of “qualifying non-resident employers” pursuant to subsection 153(7) of the Income Tax Act (collectively, the “R102 Program”).<sup>1</sup> TEI invites the CRA to provide an update on the R102 Program generally, as well as the number of Form RC473 applications that it has received each year since 2016. Please also provide details concerning the number of those applications that were rejected each year and the reasons for their rejection.

**Question 4.** *Form T1134 Update*

[Reserved.]

**C. Administrative Matters**

**Question 1.** *SR&ED Program Update*

TEI invites the CRA to provide an update regarding recent and planned changes to the scientific research and experimental development (“SR&ED”) program, including in respect of the following:

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<sup>1</sup> 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”).

- a) We understand that the CRA's SR&ED Directorate is holding stakeholder meetings to modernize and improve the efficiency and effectiveness of the SR&ED program. Does the CRA have any insights to share from these stakeholder meetings at this stage?
- b) We would appreciate an update regarding any changes to the CRA's approach to large-file SR&ED audits in recent years.
- c) We would also appreciate an update regarding any recent progress or future plans made in respect of the following challenges with the existing SR&ED program:
  - i. *Eligibility guidance* – Enhancements or clarifications to the CRA's guidance on meeting the SR&ED eligibility requirements
  - ii. *SR&ED claims review process* – Improvements to reduce the administrative burden on taxpayers
  - iii. *Dispute resolution* – In disputes concerning the eligibility of highly technical work, taxpayers have no effective recourse other than to petition the Tax Court of Canada, but that court is not always the best equipped to deal with such highly technical matters and the financial threshold is frequently too low to justify the high cost of litigation, which can lead to questionable positions on audit.

**Question 2.** *Emerging Service Trends and Practices*

In October 2018, the Minister of National Revenue announced the appointment of Mireille Laroche as the CRA's first Chief Services Officer. Shortly thereafter, in December 2018, the CRA announced the composition of an external advisory panel on service to provide the CRA with advice on emerging trends and practices in service design and delivery, as well as on client expectations related to services.

- a) TEI seeks to better understand the roles and responsibilities of the Chief Services Officer and the external advisory panel on service, and the details of any initiatives that either is undertaking.
- b) TEI members have reported experiencing significant delays in resolving audit issues involving referrals to CRA headquarters on technical issues, SR&ED reviews, transfer pricing issues, and the like. TEI acknowledges that the complexity of certain issues may require careful analysis by the CRA. At the same time, however, a taxpayer should not have to wait for several years to pass before receiving any kind of feedback from the CRA after responding to a request for information. Would addressing such delays fall within the scope of the Chief Services Officer's mandate?

**Question 3.** *Regulation 105 Withholding<sup>2</sup>*

Regulation 105 generally requires that every person paying to a non-resident person a fee, commission, or other amount in respect of services rendered in Canada, of any nature whatsoever, must deduct or withhold 15 percent of such payment. Regulation 105 withholding is unduly burdensome for companies to administer and can impose substantial compliance costs on Canadian companies with foreign vendors/suppliers. Would the CRA be open to (re)engaging in consultations with TEI and other stakeholder organizations to consider proposals for simplifying the Regulation 105 compliance process? TEI strongly believes that the introduction of a certification-based waiver process similar to the Form W-8BEN-based process in the United States would significantly improve the current Regulation 105 withholding regime—to the mutual benefit of taxpayers and the CRA.

**D. Audit/Appeal Matters**

**Question 1.** *Audit Query Response Period*

Corporate taxpayers are commonly requested to respond to audit queries within 30 days. The reasonableness of a 30-day (or any other) response period can depend on several criteria, including: whether the query letter includes a small or large number of individual queries; the nature of the queries (e.g., whether they require a short response, a document, or a large volume of data); the taxpayer resources dedicated or available to respond to the queries; the time of year at which the query is made (e.g., proximity to major holiday seasons or other filing deadlines); practical difficulties in collecting the requested data due to location or age of the data, systems, et cetera; and the importance of the response to the continued and timely progress of the audit.

TEI invites the CRA to share its views regarding the appropriateness of a minimum 30-day response period as a matter of general administrative policy for large corporations, and whether the CRA has any official view on the criteria to be considered in shortening or lengthening this period?

**Question 2.** *Audit Approach*

For large corporations under full-time audit by the CRA, the CRA's audit approach can be extremely burdensome. TEI understands that the CRA is contemplating potential changes to its audit approach and we invite the CRA to comment on those changes. In particular, TEI would appreciate the CRA's perspective in respect of the following:

- a) What is the background of the CRA's current risk-assessment model, and what are the main factors that contribute to a large corporation being ranked high-risk?

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<sup>2</sup> All references to "Regulation" herein are to sections of the current federal Income Tax Regulations, C.R.C., c. 945.



- b) What actions could a large corporation take to potentially reduce its risk assessment to “medium” and thereby reduce its audit burden?
- c) It is our understanding that corporations with a significant amount of cross-border activity are typically assessed as “high risk.” In such cases, is there any action that the corporation could take to potentially reduce its risk assessment for domestic audit purposes, allowing the CRA to focus its audit on international issues and thereby reduce the corporation’s domestic audit burden?

**Question 3.** *Headquarters Quality Control Reviews*

Several TEI members were recently advised that before a matter under audit could be closed, it would require a headquarters quality control review. Notably, in none of these cases was the tax services office (“TSO”) proposing a reassessment. Could the CRA provide some background on this review process and the circumstances in which it may be required before an audit matter can be closed—including in cases where the TSO has signed off that the audit of the matter is otherwise complete?

**Question 4.** *CRA Large File Case Program*

In November 2015, the CRA updated TEI regarding the Large File Case Program, including implementation of Integrated Large Business Audit Teams. In particular, the CRA explained:

New for the next fiscal year, the CRA is moving forward with the implementation of Integrated Large Business Audit Teams. In fact many offices already have the integrated teams in place. These teams will be led by an International Large Business Case Manager and will include domestic auditors along with specialty auditors who have knowledge of aggressive tax planning and international tax. Team size and structure will depend on the risk associated with the file/audit to be conducted. The benefits of the integrated audit teams include less compliance burden to the taxpayer and better service under the concept of “One Team, One Voice, One Audit.” There will be:

- more informed and streamlined risk assessment,
- more comprehensive audit planning, and
- enhanced audit quality due to the consolidation of technical expertise within the team.

TEI strongly supports a “1 Team, 1 Voice, 1 Audit” approach and would appreciate an update regarding the CRA’s implementation of this approach. What is the status of the Integrated Large Business Audit Teams? What expectations should we, as large business taxpayers, have? Might we expect a single audit plan covering all CRA compliance areas for each grouping of

taxation years under audit? Should we expect the coordinated planning, completion, and closure of audits covering all functional areas, including SR&ED, GST, as well as income tax?

**Question 5.** *2016 Auditor General's Report: Report 2, Income Tax Objections*

In November 2016, the Office of the Auditor General of Canada released its report on the CRA's management of income tax objections. The report set 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.

At TEI's request, the CRA has shared details and updates about the action plan over the last two years. TEI invites the CRA to continue in this tradition by answering our follow-up questions below:

- a) We would appreciate an update regarding the CRA's progress in reducing processing times for high-complexity audit files, as well as any additional steps that the CRA has taken in furtherance of this goal. What statistics can the CRA provide to demonstrate its progress made to date?
- b) Large corporations are often subject to several adjustments and consequential changes to a year under objection, which can result in additional reassessments and require the taxpayer to re-object multiple times to an outstanding issue for that year. This type of re-objection does not involve a substantive movement on the issue under objection. As the CRA responds to provide greater accuracy on the time it takes to process and resolve tax appeals, does it count these timelines from the initial objection, or does it effectively "restart the clock" whenever one of these additional reassessments and re-objections occurs?
- c) Is the CRA taking any actions at the audit level to resolve more disputes at that level?

**Question 6.** *2018 Auditor General's Report: Report 7, Compliance Activities*

In November 2018, the Office of the Auditor General of Canada released its report on the CRA's compliance activities. The report found that the CRA did not know the full results of its compliance activities and set out a number of recommendations for the CRA to fully determine those results. TEI invites the CRA to provide an update regarding its progress in implementing the Auditor General's recommendations with respect to the following:

- a) At paragraph 7.74 of the report, the Auditor General recommended that the CRA should clearly document how it sets its targets for additional revenues, also known as tax earned by audit, and that those targets should be supported by an analysis of trends in

its targets and results. The CRA agreed to more clearly document the process used to establish revenue projections and pledged to complete its analysis of the trends in its targets and results by March 2020. Please comment on the status of this process, any preliminary learnings or observations, and whether the March 2020 deadline for completion will be met.

- b) At paragraph 7.86 of the report, the Auditor General recommended that the CRA should analyze whether there are more accurate measures to track additional revenue that is generated from budgetary funding. The CRA agreed to analyze the accuracy of its performance measures for a “return on investment” from budgetary funding and propose new measures in the performance measurement framework by March 2020.
  - i. Please comment on the status of this process, any preliminary learnings or observations, and whether the March 2020 deadline for completion will be met.
  - ii. TEI invites the CRA to describe its current computation methodology for its return on investment from budgetary investments in compliance activities.
- c) At paragraph 7.91 of the report, the Auditor General recommended that the CRA should enhance its performance indicators to fully measure and report on compliance activities’ results and actual collected tax revenues. The Auditor General specifically noted that without accounting for objections, appeals and write-offs of uncollectable amounts, the CRA’s calculation of taxes collected was incomplete. The CRA agreed with this recommendation and stated it had started to work on new horizontal performance measures as a more comprehensive measure of program outcomes. It also referenced its previously launched tax gap estimate process; agreed to establish additional strategic measures that will estimate the impact of litigation, collections, and deterrence impact; and agreed to develop a performance measurement framework for its compliance programs, including measures that factor litigation and collections, by March 2020.
  - i. Please comment on the status of this process, any preliminary learnings or observations, and whether the March 2020 deadline for completion will be met.
  - ii. TEI invites the CRA to provide additional details regarding the initiated work on the “horizontal performance measure” referenced in its response.
  - iii. Can the CRA confirm that this process will attempt to quantify the amount of tax earned by audit that is ultimately collected after completion of the objection process and litigation?
- d) Earlier this year the CRA completed and released its tax gap estimate for the 2014 tax year. The tax gap was defined as “the difference between the tax that would be paid if all obligations were fully met in all instances, and the tax actually paid and

collected.” In this release, large corporations in Canada were estimated to contribute approximately \$6.7–\$7.9 billion toward the Tax Gap in underreported federal income taxes. It was also estimated that CRA assessment impact would reduce this Tax Gap by \$5 billion, for a net Tax Gap of \$1.7–\$1.9 billion attributable to underreported federal income taxes paid by large corporations in Canada. Can the CRA explain what metrics were used to compute these figures? Specifically, do these figures use the “tax earned by audit” or similar measures that do not include measurement for objections and collections as pointed out by the Auditor General, or do they use a new statistical measure that is tracked by the CRA as part of a computation of “return on investment”? Please advise.

## **E. Technical Matters**

### **Question 1.** *Withholding Tax – Dividend “Pays or Credits”*

Pursuant to subsection 212(2) of the Act, every non-resident person shall pay an income tax of 25 percent on every amount that a corporation resident in Canada pays or credits, or is deemed by Part I or Part XIV to pay or credit, to the non-resident person as a dividend. Consider the application of that subsection to the case of a Canadian corporation that declares a dividend of \$100 and issues a cheque (net of withholding tax) to a U.S.-resident shareholder but the cheque is returned to the Canadian corporation. Has the requirement to withhold pursuant to subsection 212(2) been met? More specifically, has the “pays or credits” element of that subsection been met?

TEI invites the CRA to comment on its interpretation of the phrase “pays or credits” in subsection 212(2). We further invite discussion of the following questions:

- a) Returning to the example above where a Canadian corporation declares a dividend of \$100 and issues a cheque (net of withholding tax) to a U.S.-resident shareholder but the cheque is returned, if the requirements of subsection 212(2) are not met, what is the appropriate method for the Canadian corporation to recover the over-remitted amount of withholding tax?
- b) If the requirements of subsection 212(2) are met but, due the cheque being returned, the Canadian corporation cannot avail itself of the treaty-reduced withholding tax rate because the shareholder’s address is no longer known, what would be the appropriate method to amend and augment the withholding without penalizing the Canadian corporation?
- c) If the shareholder in the preceding question was a Canadian resident and, upon receipt of the returned cheque, the Canadian corporation no longer had confirmation that the shareholder was a resident of Canada, what would be the appropriate method to amend and augment the withholding without penalizing the Canadian corporation?

## **Question 2.** *LIBOR Conversion*

In response to concerns regarding the reliability and robustness of the London Interbank Offer Rate (“LIBOR”), other interbank offered rates (“IBORs”), and new regulatory standards/guidelines, the financial services sector will be moving to alternative, risk-free rate benchmarks (“RFRs”). The transition from LIBOR and other IBORs to RFRs is expected to be completed by the end of 2021.

Since there are currently a broad range of products that reference LIBOR and other IBORs—including derivatives, loans, bonds, and securitized products (collectively, “IBOR Instruments”)—the transition to RFRs necessitates modifications to IBOR Instruments to reflect the new reference rates. Although some IBOR instruments may contain provisions addressing the discontinuance of IBORs and their replacement with alternative benchmarks, many do not, and many others contemplate temporary, rather than permanent, discontinuances of the relevant IBORs. It is expected that many IBOR Instruments will need to be amended to accommodate the transition to RFRs (“RFR Amendments”) to avoid unintended economic consequences. Given the magnitude of the number of instruments and transactions affected by this change, it is vitally important that taxpayers have certainty as to the expected tax consequences of RFR Amendments.

TEI invites the CRA to confirm that, in its view, making a RFR Amendment to an IBOR Instrument to accommodate the transition from IBOR to RFRs would not constitute a disposition of the IBOR Instrument for Canadian federal tax purposes. We note that the CRA provided similar guidance in connection with the conversion of obligations denominated in existing European currencies to the Euro in 1999.<sup>3</sup> The conversion to the Euro constituted a similar industry-wide change, mandating similar amendments to existing instruments to give effect to the commercial reality arising from the conversion to the Euro. TEI believes that it is necessary and appropriate for the CRA to adopt a similar position on the conversion of IBOR Instruments to RFRs as it did for the conversion of financial instruments to the Euro.

## **Question 3.** *Blockchain Technology and Cryptocurrency*

Cryptocurrency is a type of virtual currency that utilizes cryptography to secure transactions that are digitally recorded on a distributed ledger, such as a blockchain. The use of blockchain technology and cryptocurrency has gone from a nascent concept on internet message boards to what is today—a legitimate method of payment for goods and services, a basis for smart contract, and a store of value.

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<sup>3</sup> See, e.g., Income Tax Tech. News No.15 (Dec. 18, 1998) (cancelled); CRA Doc. No. 06338M8 (Jan. 12, 1999).

TEI members, as well as major financial institutions and governments, are commissioning white papers to prepare themselves for what is increasingly anticipated to be a major disruption across many industries, transaction platforms, supply chains, and commerce in general.

TEI is aware that the CRA has provided guidance on the Canadian federal tax implications of cryptocurrency, most recently updated in June 2019. TEI invites the CRA to share its observations regarding the adoption of blockchain technology, and cryptocurrency specifically, by Canadian taxpayers and discuss any actions it might be taking in anticipation of greater adoption in commercial transactions.