The Canada Revenue Agency (CRA) welcomes the opportunity to discuss the following questions on commodity tax issues with representatives of the Tax Executives Institute, at TEI's liaison meeting on December 4, 2012.

The following answers to the questions posed by the TEI represent our general views with respect to the subject matter and do not replace the law found in the *Excise Tax Act* (the ETA) and its regulations. These general comments are provided for your reference and do not bind the Canada Revenue Agency (CRA) with respect to a particular situation. Since our comments may not completely address a TEI member's particular situation, the member may wish to refer to the ETA or appropriate regulation, or contact any CRA GST/HST Rulings Centre for additional information. A ruling should be requested for certainty in respect of any particular GST/HST matter; reference may be made to GST/HST Memorandum 1.4, *Excise and GST/HST Rulings and Interpretations Service*. To make a technical enquiry on the GST/HST by telephone, call 1-800-959-8287. Selected listed financial institutions may call 1-855-666-5166.

For TEI members located in the province of Quebec (other than a selected listed financial institution), to make a technical enquiry or request a ruling related to the GST/HST, contact Revenu Québec by calling 1-800-567-4692.

QUESTION # 1: Provincial Matters and the Harmonized Sales Tax

There are pending Harmonized Sales Tax (HST) measures in Quebec, British Columbia, and Prince Edward Island that we would like the Canada Revenue Agency to address.

a. *Revocation of HST in British Columbia*. Please provide an update on the timetable, transitional rules, and any other legislative or administrative changes that will be required to rescind the HST in British Columbia.

b. *QST and GST*.

(i) Please provide any available details concerning the agreement for the province of Quebec to harmonize the Quebec Sales Tax (QST) with the Goods and Services Tax (GST).

(ii) Please confirm that Quebec will not be listed in Schedule VIII to the *Excise Tax Act* (ETA) as a participating province, and that it will not be considered a "participating province" as defined in subsection 123(1) of the ETA.

c. *Introduction of HST in Prince Edward Island*. Please provide an update on the timetable, transitional rules, and any other legislative or administrative changes that will be required to adopt the HST in Prince Edward Island.

ANSWER # 1: Provincial Matters and the Harmonized Sales Tax

Verbal responses were provided. With respect to question (b)(ii) it was confirmed that Quebec will not be listed in Schedule VIII to the *Excise Tax Act* (ETA) as a participating province, and that it will not be considered a "participating province" as defined in subsection 123(1) of the ETA.

QUESTION # 2: Recaptured Input Tax Credits (RITCs) on per Km Auto Allowance

As a temporary measure beginning July 1, 2010, and effective through June 30, 2018, large businesses must recapture input tax credits for the provincial portion of the HST paid or payable on "specified property and services" in British Columbia and Ontario.[1] Many large businesses in those provinces pay a per kilometre auto allowance (AA) to employees who use their personal vehicles for business purposes. The AA is treated as an allowance for purposes of section 174 of the ETA and is deemed to include HST. When calculating the amount of an AA, large businesses take into consideration various expenditures attributable to owning/leasing a passenger vehicle, including insurance, repairs and maintenance, and, in British Columbia, fuel costs, which are not a "specified property or service" as contemplated in the *New Harmonized Value-Added Tax System Regulations, No.2* (the Regulations) to the ETA. Further, there are instances where an AA is paid to an employee who acquired their vehicle before the HST was introduced on July 1, 2010.

Typically, the large businesses that pay an AA claim a full input tax credit (ITC) to recover the tax deemed to be included in the allowance. Uncertainty exists whether any part of that deemed tax is subject to the recapture of input tax credit (RITC) rules since the AA includes items falling both in and outside the definition of a "specified property or service."

GST/HST Technical Information Bulletin B-104 (under the heading Allowances and Reimbursements on page 19) states that the deemed HST included in the AA, but not attributable to "specified property or services," is not subject to the RITC rules:

> *If a large business pays an allowance … to an employee … in circumstances where ITCs would be available under the Act … in respect of that allowance …, the large business will generally be required to recapture the provincial component of those ITCs to the extent that the allowance is attributable to specified property and services. (Emphasis added.)*

[1] In 2011, residents of British Columbia approved a referendum to repeal the Harmonized Sales Tax (HST) and reinstate the Provincial Sales Tax (PST). The return to the PST will occur on April 1, 2013.

During last year's liaison meetings, TEI was informed that Finance was in discussions with British Columbia and Ontario on the creation of an administrative factor for registrants to use in calculating the ITCs subject to the RITC regime for purposes of an AA. In the meantime, CRA suggested that registrants use a reasonable allocation based on the historical composition of their AAs. We have the following questions:

(i) Would Finance provide an update on the status of the negotiations with the governments of Ontario and British Columbia to announce an administrative factor in respect of AAs?

(ii) Should the "reasonable allocation" discussed at last year's liaison meeting take into account variations in ITCs for vehicles acquired before or after July 1, 2010, all other things being equal?

During the discussions on December 4, 2012, the following question was raised.

(iii) Where a large business has over reported the amount of RITC on an AA in a particular GST/HST return, what is the timeframe within which to request a correction to the return?

ANSWER # 2: Recaptured Input Tax Credits (RITCs) on per Km Auto Allowance

(i) The Department of Finance is to respond to this question**.**

However, the Department of Finance has advised the CRA that the Government of Ontario has decided against developing an administrative factor that could be used for calculating the RITC on a motor vehicle allowance paid in respect of a qualifying motor vehicle. The CRA will accept a GST/HST registrant's approach to determine the portion of the input tax credit (ITC) for a motor vehicle allowance that would be attributable to specified property and services, and therefore subject to recapture provided that the approach is fair and reasonable.

(ii) Section 174 of the *Excise Tax Act* (the ETA) deems the property or services for which an allowance is paid to be acquired by the person paying the allowance. A motor vehicle allowance paid in respect of a qualifying motor vehicle is subject to the RITC requirement in Ontario and British Columbia, under section 236.01 of the ETA, to the extent that:

(a) a large business pays the allowance, and
(b) the property and/or service for which the allowance is paid would be a specified property or service had it been acquired directly by the large business.

Motor vehicle allowances cover many components, such as fuel, depreciation, maintenance, insurance, licensing, or registration. Based on the composition of the allowance that the GST/HST registrant pays, the CRA would generally look for a registrant's reasonable allocation among the components to determine the RITC amount on this type of allowance.

The CRA considers the portion of a motor vehicle allowance attributable to depreciation, and in Ontario, motive fuel, other than diesel, to be the portion of the allowance that would be paid in respect of specified property.

By virtue of the deeming provision in section 174 of the ETA, a large business paying the allowance is deemed to have acquired the supply of the property or service for which the allowance was paid, including the use of a qualifying motor vehicle acquired prior to July 2010. As a consequence of this deeming provision, a reasonable portion of the allowance attributable to the depreciation and fuel (Ontario) would be subject to the RITC requirement for the provincial portion of the HST.

(iii) Where a large business has over reported the amount of RITC in a particular GST/HST return, the large business may request an amendment to the return within four years from the date the return was required to be filed.

QUESTION # 3: GST/HST on Substantial Completion – Public-Private Partnerships

Under public-private partnership (PPP) agreements, the private sector party generally designs and constructs infrastructure, and then finances, maintains, and operates the infrastructure for an extended period of time, usually 20 or 40 years. The PPP agreement grants the private sector party a licence to access the land allowing performance of the obligations under the PPP agreement. Title to the infrastructure typically transfers to the public sector party during construction, not when construction is substantially completed. As a result, the private sector party never owns any interest in the land nor the materials incorporated into the project site. The type of infrastructure supplied by the private sector party varies depending on the PPP agreement; these agreements have been used in the past to build hospitals, prisons, schools, roads, bridges, and public transit systems, among other things.

The private sector party may receive a lump-sum payment at substantial completion of the infrastructure construction (the substantial completion payment). In addition, the private sector party typically receives monthly service payments or monthly availability payments for the term of the PPP agreement. These monthly payments are based on, among other factors, unpaid design and constructions costs, finance charges, operation and maintenance cost of the infrastructure, and a rate of return or mark-up. The fixed contract price for the PPP agreement is typically calculated using a complex financial model that includes the cost for the infrastructure, a projection of the operating and maintenance costs for the life of that infrastructure, and financing charges, as well as other items. This financial model is used solely in the bidding process to determine the contract price.

The "payment schedule" of the PPP agreement will establish the amount of the monthly payments over the life of the agreement. These may be adjusted based on changes to the scope of services provided and inflation. While the private sector party's 4 cost estimate for the infrastructure is known at the time the financial model is prepared, the actual cost may vary. Any cost overruns are the responsibility of the private sector party.

Under paragraph 168(3)(c) of the ETA, GST/HST becomes payable on the value of consideration not yet paid under an agreement for the construction of real property (in this case referred to as infrastructure) when it is substantially completed. There is an exception to this general rule when the value of consideration is not ascertainable at the time of substantial completion. When this occurs, subsection 168(6) of the ETA postpones the payment of GST/HST until the consideration becomes ascertainable.

TEI wishes to confirm the following application of the GST/HST to payments due under PPP agreements:

(i) Substantial completion payments made by the public sector party are subject to GST/HST once construction is substantially completed under paragraph 168(3)(c) of the ETA.

(ii) Monthly service or availability payments fall outside paragraph 168(3)(c) of the ETA, because they compensate private sector parties for services performed and not for construction of real property. As a result, no GST/HST is payable at substantial completion in respect of any unpaid construction costs which may be incorporated into the monthly service or availability payments. Instead, GST/HST applies on payment of the monthly service or availability payments.

(iii) As previously indicated, the parties do have a cost estimate of the construction costs at the time the bid is submitted. These costs are not reflected, however, in the payment mechanism under the PPP agreement, which generally includes a substantial completion payment, as well as monthly service or availability payments. Accordingly, it is acceptable to take the position that the value of consideration paid for the infrastructure is not ascertainable, and that the GST/HST will be calculated on the monthly service or availability payments paid over the term of the PPP.

(iv) If GST/HST must be paid on the unpaid construction costs at substantial completion, the private sector party is required to only collect tax on the maintenance/operating portion of the monthly service or availability payments over the term of the PPP agreement as those unpaid construction costs would have already been taxed.

(v) Any financing charges included in the monthly service or availability payments are exempt from GST/HST.

ANSWER # 3: GST/HST on Substantial Completion – Public-Private Partnerships

i) It is a question of fact as to whether the substantial completion payment represents the value of consideration for construction services.

If a taxable supply is made under a written agreement for the construction, renovation, alteration of, or repair to, real property (hereafter, "construction of real property") and all or any part of the consideration for the supply has not been paid or become due by the last day of the month following the month in which the construction of the real property is substantially completed, paragraph 168(3)(c) of the ETA will apply.

ii) While the question states that the monthly payment is not for the construction of real property, the facts state that the monthly service payments are based, in part, on unpaid design and construction costs.

It is a question of fact whether any portion of the monthly service payments represent consideration attributable to the construction of the real property. However, if any part of the consideration for the construction of the real property has not become payable by the last day of the month following the month in which construction of the real property was substantially completed, the GST/HST will be payable on that day.

iii) Based on the information provided, we cannot corroborate your statement that the value of consideration for the infrastructure is not ascertainable.

Under paragraph 168(3)(c) of the ETA , tax will apply to any portion of the consideration that is ascertainable on the day referred to in that paragraph.

iv) If part of a monthly service charge is in respect of consideration for the construction of the real property, and tax has applied to the entire consideration for the construction of real property under paragraph 168(3)(c) of the ETA, tax will not apply to that part of the monthly service charge. However, the private sector party must maintain satisfactory evidence that GST/HST on that part of the consideration was previously remitted.

v) Based on the information provided to us, we cannot corroborate that the monthly service payments include consideration for a separate exempt supply of a financial service. Generally, financing costs incurred by the contractor and passed on in the billings related to the construction or operation would not be exempt.

QUESTION # 4(a): Non-resident Service Providers

Canadian-based registrants often contract with non-resident service providers (ForeignCos) with little activity in Canada that do not solicit business in Canada. Often, the ForeignCo's only activity in Canada throughout its fiscal year is a single contract with the Canadian registrant. Questions exist whether the activities of these ForeignCos rise to the level of carrying on business in Canada (which would create GST/HST registration requirements for the ForeignCos).

GST/HST Policy Statement P-051R2, *Carrying on Business in Canada*, provides CRA's interpretation of what activities rise to the level of carrying on business in Canada. The policy statement includes two examples of ForeignCos' providing services to Canadian registrants, and both conclude that the ForeignCo is carrying on business in Canada creating a GST/HST registration requirement. In Example 19, the ForeignCo provides specialized cleaning services for power generation facilities, and in Example 20, the ForeignCo provides business consulting and training services.

If a ForeignCo engaged exclusively in commercial activity chooses to obtain a GST/HST registration, it must post a non-resident bond, file periodic returns, charge tax on all services provided in Canada, and recover GST/HST on its inputs by claiming ITCs via the periodic return process. These burdensome compliance requirements, a lack of awareness of the registration requirements, and disagreement with CRA's conclusions in the policy statement cause some ForeignCos to forgo the GST/HST registration process.

Canadian registrants purchasing services from a ForeignCo that does not register for GST/HST lose the ability to claim an ITC on costs incurred by the ForeignCo on taxable supplies in Canada. The unrecoverable tax is typically included in the expenses billed to the Canadian registrant; travel and living expenses incurred in Canada are prime examples of these expenses.[2]

[2] The "small supplier" option is not viable in this instance.

(i) What recourse does CRA have under the ETA to require ForeignCos to comply with GST/HST Policy Statement P-51R2 by registering for GST/HST purposes in situations like those in Examples 19 and 20 of the policy statement?

(ii) What are the consequences for a ForeignCo if it chooses not to register despite carrying on business in Canada within the meaning of Examples 19 and 20 in the policy statement?

(iii) What are the consequences for a Canadian registrant purchasing services from a ForeignCo that has chosen not to register despite carrying on business in Canada within the meaning of Examples 19 and 20 in the policy statement?

4(b) Section 180 Relief **(Finance Only)**

Apropos last year's question on services provided by non-residents and section 180 of the ETA,[3] TEI was asked by Finance to confirm whether this continues to be an issue. Yes, it has, with TEI members experiencing significant increases in ITCs trapped in situations involving services provided to Canadian registrants by non-resident service providers. Because these increases show no signs of abating in an increasingly global economy, TEI urges Finance to amend section 180 of the ETA to expand the existing relief to include purchases of services acquired from a non-resident that is also not registered nor required to be registered for purposes of the GST/HST.

[3]Section 180 of the ETA deems a person to have paid tax in respect of a supply of property equal to the tax under Division III or subsection 179(1) in respect of the importation of goods (but not services).

ANSWER # 4(a): Non-resident Service Providers

i) The principle of voluntary compliance lies at the heart of the administration of the Canadian tax system. The fundamental strategy is to first promote compliance, while also maintaining supporting systems aimed at effective verification and enforcement. The goal of enforcement is compliance. Enforcement activities include a broad range of formal and informal responses designed to ensure compliance by correcting, deterring or penalizing non-compliance. Non-resident persons who are non-compliant with the requirement under the ETA to register for purposes of the GST/HST are subject to the same recourse mechanisms employed by the CRA in dealing with non-compliant residents. The CRA has identified the pursuit of non-registrants as a high priority in its strategy to combat non-compliance. Where a non-resident company is carrying on business in Canada and chooses not to register for the GST/HST as required under subsection 240(1) of the ETA, section 296 of the ETA provides the CRA the authority to assess the company for its liabilities under Part IX of the ETA.

ii) The ETA provides for the application of a variety of interest and penalties for non-compliant behaviour ranging from the imposition of civil penalties (i.e., administrative or monetary penalties) to criminal sanctions for the most serious cases. The CRA has some discretion in addressing violations under the ETA by imposing the appropriate sanction in order to achieve compliance. Non-resident persons who are not compliant with the requirement under the ETA to register for purposes of the GST/HST are subject to the same enforcement mechanisms in the ETA as non-compliant residents. Where a non-resident company chooses not to register as required despite carrying on business in Canada within the meaning provided in GST/HST Policy Statement P-051R2, *Carrying on Business in Canada*, it can be assessed for its tax liabilities by the CRA as noted above. It can also be assessed interest and penalties under sections 280(1), 280.1, and 280.11 of the ETA.

Interest is payable under subsection 280(1) of the ETA at the prescribed rate on the amount, computed for the period beginning on the first day following the day on or before which the amount was required to be remitted or paid and ending on the day the amount is remitted or paid. The prescribed rate is the basic rate plus 4%. The basic rate

of interest is established quarterly. The basic interest rate is the simple arithmetic mean, expressed as a percentage per year and rounded to the next higher whole percentage where the mean is not a whole percentage, of all amounts each of which is the average equivalent yield, expressed as a percentage per year, of the Government of Canada 90-day Treasury Bills sold at auction during the first month of the preceding quarter.

A failure to file penalty under section 280.1 of the ETA is equal to the total of:

a) 1% of the total of all amounts each of which is an amount that is required to be remitted or paid for the reporting period and was not remitted or paid, as the case may be, on or before the day on or before which the return was required to be filed, and
b) the amount obtained when one quarter of the amount determined under paragraph (a) is multiplied by the number of complete months, not exceeding 12, from the day on or before which the return was required to be filed to the day on which the return is filed.

A failure to file electronically penalty under section 280.11 of the ETA and prescribed in section 3 of the *Electronic Filing and Provision of Information (GST/HST) Regulations* is equal to

a) for the first failure by the person, $100; and
b) for each subsequent failure by the person, $250.

iii) The Canadian registrant purchasing services from ForeignCo, who has chosen not to register as required despite carrying on business in Canada, would not be entitled to claim any input tax credits (ITCs) for the tax payable on the taxable supplies made in Canada by ForeignCo. Paragraph 169(4)(a) of the ETA requires that, before filing the return in which an ITC is claimed, the registrant has obtained sufficient evidence in such form containing such information as will enable the amount of the ITC to be determined, including any such information as may be prescribed. The prescribed information can be found in section 3 of the *Input Tax Credit Information (GST/HST) Regulations*. The required information varies depending on the value of the supply. In this case, the documentary requirements would not be met.

Also, as indicated in the question, the Canadian registrant would not be entitled to claim ITCs for the tax that is payable by ForeignCo on expenses that ForeignCo incurs in Canada. However, as a registrant who is required to collect tax on taxable supplies it makes in Canada, ForeignCo would be entitled to claim ITCs for the tax payable on those expenses that are incurred in the course of its commercial activities.

QUESTION # 5: Joint Ventures

a) *Joint Venture Activities – Exploring or Exploiting a Mineral Deposit.* Under the ETA, a joint venture (JV) is different from a partnership because the JV is not included in the definition of a "person" and thus cannot register and account for the GST/HST in its own right. Section 273 of the ETA provides for a simplified remittance and compliance process for JVs engaged in "the exploration or exploitation of mineral deposits, or a prescribed activity." Under this provision, a joint election can be made by the JV participants to elect one party as the JV "operator," who accounts for the GST/HST collected by the JV and claims the ITCs in relation to the taxable expenditures of the JV (the JV Election).

In March 2011, the list of prescribed activities for purposes of subsection 273(1) of the ETA (the Joint Venture (GST/HST) Regulations) was significantly expanded. The original list of prescribed activities was limited to the construction of real property[4] and the exercise of the rights or privileges, or the performance of the duties or obligations, of ownership of an interest in real property. The expanded list of prescribed activities in the revised regulations includes (a) the transportation of natural gas liquids (NGLs) by means of a pipeline that operates as a common carrier of NGLs, and (b) the operation of a transmission line that is used to transmit electrical power.

Even with this expansion, the list of prescribed activities remains unnecessarily narrow. In *Dunbar v. The Queen*, 2005 TCC 769 (November 29, 2005), the Tax Court of Canada interpreted the phrase "the exploration for or exploitation of petroleum, natural gas, minerals or other similar resources" in the context of the overseas employment tax credit included in the *Income Tax Act*. The court held that "[e]xploitation means more than simply extracting and selling…. [A]ll stages necessary to take the natural resource to its maximum value for the pursuit of profit is [sic] part of the exploitation process."

[4] This includes feasibility studies, design work, development activities, and the tendering of bids where undertaken in furtherance of a JV for the construction of real property.

In contrast, CRA Draft Memorandum 3.7, *Natural Resources* and the list of prescribed activities in the *Joint Venture (GST/HST) Regulations* reflect a more restrictive approach to what activities fall within definition of "exploitation." The approach taken by CRA and Finance has resulted in certain activities in the petroleum industry being excluded from the group of activities eligible for the JV Election pursuant to section 273 of the ETA even though they are similar to the prescribed activities and fall within the Tax Court's interpretation of the term "exploitation".

(i) Would Finance/CRA agree to interpret of the term "exploitation" in subsection 273(1) of the ETA in a manner consistent with the opinion of the Tax Court in *Dunbar*, which would include as eligible for the JV Election the activities of (a) the operation of a crude oil or diluent pipeline, and (b) the operation of rail and truck terminal facilities in order to get shippers' products to market?

(ii) In the alternative, would Finance/CRA consider amending the Joint Venture (GST/HST) Regulations and expanding the list of prescribed activities for purposes of the election in subsection 273(1) of the ETA to include (a) the operation of a pipeline that is used to transport a continuous transmission commodity, and (b) the operation of a rail and truck terminal for receipt and handling of a continuous transmission commodity?

b) *Joint Venture Election – Other Commercial Activities (Finance Only).* Certain other commercial activities – such as the rehabilitation or repair of bridges; the operation and maintenance relating to existing real property; environmental consulting services; the construction of ships and vessels; and the construction and operation of a liquid natural gas facility – may not be considered prescribed under existing law. Since the intended purpose of the JV Election is to simplify the compliance and tax filing process, TEI urges Finance to amend subsection 273(1) of the ETA and expand the list of prescribed activities in the Joint Venture (GST/HST) Regulations extending the JV Election to all joint ventures engaged in commercial activities. In the alternative, TEI recommends treating a JV as a person for purposes of the ETA in the same manner as a partnership.

c) *Prescribed Form – Joint Venture Election (CRA Only)*. There are still many operating JVs that began before the GST was enacted in 1991, as well as numerous JVs established after 1990 where, as the years have passed, participants have changed while the operator generally has remained the same. Subsections 273(2), 273(6), and 273(7) of the ETA provide simplifying rules in respect of the JV Election for JVs created prior to 1991, or JVs where a participant has been replaced with another participant. Some registrants have faced increased scrutiny during audits with respect to documentation to support the JV election. Consistent with GST Policy Statement P-187, *Prescribed Form for Joint Venture Elections*, can CRA provide comments on the availability of administrative tolerance as it relates to JVs where the operator and participants have operated for many years under the provisions of the JV Election and 8 where the JV agreement contains a clear appointment of the operator and almost all of the prescribed information for the JV Election?

ANSWER # 5: Joint Ventures

a) The CRA is currently reviewing its interpretation of the term “exploitation” in subsection 273(1) of the ETA, and the term “exploit” in paragraph 162(2)(a) of the ETA in light of the Tax Court of Canada’s Dunbar decision. Please be assured that your comments will be taken into consideration in that review.

b) Response to be provided by the Department of Finance.

c) Section 273 of the ETA exists to ease the administration of the GST/HST for participants in a joint venture.

In the interest of a complete response, the prescribed information for purposes of making a joint venture election is identified in GST/HST Policy Statement P-187, *Prescribed Form for Joint Venture Elections*, as follows:

1. the operator's complete legal name,
2. the operator's registration number,
3. the operator's mailing address (including city and postal code).
4. the name, title and telephone number of a contact person for the operator,
5. the operator's language of preference,
6. the complete legal name of the other participants,
7. the registration numbers of the other participants, if any,
8. the mailing address (including city and postal code) of the other participants,
9. the name, title and telephone number of a contact person for the other participants,
10. the language preference of the other participants,
11. the name of the joint venture, if any,
12. a brief description of the joint venture activity,
13. a statement certifying that the joint venture operates according to an agreement evidenced in writing and that the joint venture is organized in a manner other than a partnership or corporation,

14. the effective date of the election,
15. a certification, signed by the operator, indicating that the information given in the form is true, correct and complete in every respect to the best of the operator's knowledge and that the person signing is authorized to sign on the operator's behalf,
16. the signature of the other participants, unless the operator is authorized in other supporting documentation, which is signed by the other participants, to sign the election form on their behalf, and
17. a statement which acknowledges that, by signing the form, the joint venture participants elect jointly to have the person identified as the operator account for the GST/HST in respect of all properties and services that are supplied, acquired or imported by the operator on behalf of the participants in the course of activities of the joint venture while the election is in effect pursuant to paragraph 273(1)(a) of the ETA.

As noted in P-187, where some of this information, other than the effective date, is missing, the CRA will determine on a case-by-case basis whether the missing information affects the substance of the election. Where it does not affect the substance of the election, the election remains valid. The issue then becomes the relevance of the particular missing or out-of-date information in terms of the substance of the election.

Where a participant in a joint venture leaves a joint venture, the election made by the remaining participants and the operator of the joint venture remains valid provided there is as least one non-operator participant remaining along with the operator. However, where a participant departs a joint venture and another participant joins the joint venture, the participants are advised to amend the existing election to provide for the departure and joining of the particular participants. This information is relevant and affects the substance of the election, and its validity.

Subsection 273(5) of the ETA provides for joint and several liability between the operator and the other participants. The substance of a particular election can be compromised where any prescribed information that is necessary to ensure the integrity of the joint and several liability is missing or out-of-date.
It is preferred that an election made under section 273 of the ETA be made using form GST21 *Election or Revocation of an Election To Have the Joint Venture Operator*

Account for the GST/HST. However, the CRA will accept as a valid election made under section 273 an election that is made without using form GST21 where the election document(s) used by the participants includes the prescribed information as identified in P-187 with the same proviso that any missing information must not compromise the substance of the election nor the joint and several liability as discussed above. The completed election form GST21or the alternative election document(s) is not required to be filed with the CRA and should be kept on file by the operator and participant(s).

Trusts and Nominee Corporations

We would like to use this opportunity to bring to your attention recent developments regarding joint ventures, trusts, and nominee corporations. We were recently asked about whether a bare trust or nominee corporation could be the operator of a joint venture. Our position is as follows.

A person must first be considered a participant in a particular joint venture in order to be designated as its operator. GST/HST Policy Statement P-106, *Administrative Definition of a Participant in a Joint Venture*, explains the CRA policy regarding when a person who does not invest in a joint venture can be considered a participant in the joint venture for purposes of election under section 273 of the ETA. As stated in that policy statement, for purposes of the election, a person who does not invest in the joint venture may be considered to be a participant in the joint venture if that person is designated as the operator of the joint venture under an agreement in writing and has the managerial or operational control of the joint venture. The agreement in writing merely has to identify the person as the operator of the joint venture. Although the agreement may or may not include information with respect to the person's duties as operator of the joint venture, whether the person has managerial or operational control is a question of fact which is determined via a full examination of the person's duties.

For a person to have managerial or operational control of a joint venture the person must have authority to manage the joint venture's daily activities without needing the input or approval of any financial participant. This may include the management of the accounts, the filing of the GST/HST returns, and the daily administration of the joint venture's activities. Evidence of a person having the necessary managerial or operational control may also include having the authority to engage personnel or contractors on behalf of the joint venture. Where the person has engaged no staff to perform any of the operator's duties it is doubtful whether they have managerial or operational control.

However, managerial or operational control does not necessarily include any authority to initiate significant business decisions such as the acquisition of or selling of certain core business assets. It can be limited to the daily functions necessary to run a business but must include all or at least most of the significant duties required to maintain managerial or operational control of the joint venture.

It is common practice in some industries to designate as operator of a joint venture for purposes of the joint venture election under section 273 of the ETA, a "bare trust" or a nominee corporation.

Where a "bare trust" is in fact a bare trust at law, it cannot be the operator of a joint venture for the purposes of the election. At law, a bare trust is a trust which merely retains legal title to assets with no other functions, while the beneficial owner(s) retain beneficial ownership (refer to GST/HST Policy Statement P-015, *Treatment of Bare Trusts under the Excise Tax Act*). However, industry often uses the term "bare trust" to describe a trust which has been given further responsibilities. These other responsibilities preclude the trust from being considered a bare trust for purposes of the ETA. Where such a trust is identified as a bare trust under an agreement in writing, and is identified as the operator of the joint venture, the facts must be examined to determine whether the trustee has the managerial or operational control of the joint venture. If that trustee does not have such control, that trust does not qualify as a participant and thus cannot be the operator of the joint venture for purposes of the election. If that trustee does have such control then that trust qualifies as a participant, however, the trust would not be considered to be a bare trust for purposes of the ETA.

The same conditions also apply to a nominee corporation. Industry may characterize the operator of a joint venture as a nominee corporation. A nominee corporation can be a trust or an incorporated entity. Generally, a nominee corporation essentially provides the use of its name to participants in a particular joint venture. Where the only function of a nominee corporation is to have its name used instead of the names of the participants in the joint venture's dealings with third parties, the nominee corporation does not qualify as a participant for purposes of the joint venture election because it does not have managerial or operational control of the joint venture.

A common scenario is one where an entity, which is referred to as a nominee corporation by the participants, holds title to the assets of the joint venture on behalf of the participants, manages the collection and remittance of the GST/HST, maintains the bank accounts in the nominee's name, and receives all payments and pays all operational expenses on behalf of the joint venture. These responsibilities alone do not convey the nominee corporation the managerial or operational control of a joint venture. As a result, such a corporation would not be considered as a participant and thus, an operator, of the joint venture for purposes of the election under section 273 of the ETA.

For the same reasons, a trust referred to as a bare trust by the participants, who merely holds title to the assets, receives payments, and administers the GST/HST on behalf of the participants (the beneficial owners of the trust) does not qualify as a participant of the joint venture and thus, could not be considered as the joint venture's operator for purposes of the election under section 273 of the ETA.

An example of a nominee corporation which does have the managerial or operational control of a joint venture would be that of a management company hired by the participants in the joint venture to manage the joint venture's activities (such as operating a hotel) and provide its name to the joint venture. For example, the management company would make and receive payments in its own name on behalf of the joint venture and maintain operational control of the daily activities of the hotel. However, the participants in the joint venture would keep the power to make significant decisions (such as selling the hotel) and the management company would report to the participants on a regular basis. Since the management company has operational control, the management company would be considered to be a participant and operator of the joint venture for purposes of the election under section 273 of the ETA provided that there is a written agreement between the management company and the joint venture that identifies the management company as the operator of the joint venture.

Each case will be looked at on a case by case basis to determine whether the duties vested in a particular nominee corporation or a trust referred to as a bare trust are sufficient to be considered managerial or operational control.

QUESTION # 6: Business Groups

a. *GST/HST Returns (Finance Only).* The ETA reporting obligations require each registrant to file a separate GST/HST Return for each reporting period. Would Finance consider modifying the legislation to permit wholly-owned corporate groups to file a consolidated GST/HST Return for each reporting period?

b. *Audit Risk Assessment (CRA Only).* TEI invites CRA Audit to provide an update on its audit risk assessment strategy. Would CRA Audit consider an approach in which wholly owned corporate groups share similar risk levels?

ANSWER # 6(b): Business Groups

From a commodity tax perspective, risk assessment is a combination of several factors, including the following (not a comprehensive list):

a. Filing history

b. Industry sector

c. Governance

Under the ETA, a registrant could have wholly owned corporate entities that file separate returns (BN15) and could have different risk levels based on the factors above. CRA's risk assessment is undertaken at the 15 digit BN level.

As a result, it is possible that wholly owned corporate groups share similar risk levels or be entirely different.

QUESTION # 7: Financial Services

a. *Status of Internal Review of Finance Services (Finance Only)*. TEI invites Finance to provide an update on the internal review of the GST/HST treatment of financial services?

b. *Pension Plans*.

(i) Would Finance provide an update regarding any changes being considered to simplify the current rules for pension plans and other investment plans (such as establishing additional thresholds) particularly since the experience of many pension plans is that the compliance burden is excessive compared with the tax adjustments that are generated?

(ii) Following up on last year's liaison meetings, would Finance consider modifying the legislation to confirm that deemed supplies will only exist in situations where all or substantially all of an entire operation or process is being carried out "in house," and not in situations where only a portion of a full-time equivalent headcount is utilized to support the pension plan?

(iii) Would Finance consider amending the legislation so that no actual supply would exist for GST/HST purposes when a deemed supply of services is made by the employer?

(iv) Would Finance consider adding an election to allow a pension plan to be recognized as the recipient of services where the services were contracted for by the employer as administrator for the operation of the pension plan and paid for by the pension plan so long as no input tax credits were taken by the employer?

(v) Would CRA provide an explanation for the requirement to complete the GST/HST Pension Entity Rebate Application and Election (Form 9 RC4607) twice per fiscal year for entities that are not registered? Why must Q1 & Q2 be separated from Q3 & Q4? Would CRA consider permitting the pension entity to file a single return for each fiscal year?

c. *Financial Institution GST/HST Annual Information Returns.*

(i) Could CRA and Finance discuss any changes that are being contemplated to help alleviate the complexity of certain information requirements currently found within the Annual Information Return?

(ii) Would Finance consider relieving *de minimis* financial institutions of the annual obligation to complete and file these returns?

(iii) Is consideration being given to incorporating the Annual Information Return into an SLFI's annual GST/HST Return to avoid burdensome duplicate reporting?

(iv) Would it be possible to exclude the reporting of items that have already been reported to the CRA or Canada Border Services Agency (CBSA) through another return or process?

d. *Amounts Included in Calculating the De Minimis Threshold (Finance Only).*

(i) Is consideration being given to amending paragraph 149(1)(c) of the ETA to exclude the interest income that is earned by the parent company of a group of closely-related corporations from the investment of short-term surplus funds, where those funds are generated through the commercial activities of the operating corporations of the group?

(ii) Is consideration being given to expanding the exclusion provided in subsection 149(4) of the ETA when calculating the *de minimis* threshold to interest earned from related partnerships?

ANSWER # 7 (b)(v): Pension Plans

A pension entity rebate is available pursuant to section 261.01 of the ETA to pension entities that are qualifying pension entities on the last day of a particular claim period of the entity. A claim period has the meaning assigned by subsection 259(1) of the ETA. A registrant's claim period is a reporting period, and a non-registrant's claim period is the first two or the last two fiscal quarters of its fiscal year.

Therefore, when a qualifying non-registered pension entity applies for the rebate under section 261.01 of the ETA, it is a legislative requirement that the claim period cover Q1 and Q2 or Q3 and Q4.

Rebates under section 261.01 are claim-period specific. Subsection 261.01(2) of the ETA allows a pension entity to claim a rebate in respect of the "pension rebate amount" of the pension entity for a claim period. A "pension rebate amount" is essentially 33% of all "eligible amounts" of the pension entity for the claim period. An "eligible amount" of a pension entity for a claim period is basically the sum of (a) unrecoverable amounts of tax paid or payable by the pension entity during the claim period and (b) unrecoverable amounts of tax that are deemed to have been paid under section 172.1 of the ETA during the claim period. These definitions clearly indicate that the eligible amounts are period-specific; i.e., eligible amounts for one period could not be claimed in a rebate for a different claim period. Therefore a rebate claim for Q1 and Q2 cannot be consolidated with a rebate claim for Q3 and Q4 in a single rebate application.

Any question concerning whether a legislative amendment would be considered should be directed to the Department of Finance.

ANSWER # 7 (c): Financial Institution GST/HST Annual Information Returns

(i) Currently, the CRA is not contemplating any changes with respect to the information requirements related to the *Financial Institution GST/HST Annual Information Return*.

(ii) Response to be provided by the Department of Finance.

(iii) At this time, there are no plans to incorporate the *Financial Institution GST/HST Annual Information Return* with the *Goods and Services Tax/Harmonized Sales Tax Final Return for Selected Listed Financial Institutions*.

(iv) As previously indicated, the CRA is not currently contemplating any changes with respect to the information requirements related to the *Financial Institution GST/HST Annual Information Return*.

QUESTION # 8: OECD's Global VAT Forum and Consumption Tax Tag
(Finance Only)

a. Could Finance provide an update on the recent OECD Global VAT Forum?

b. Could Finance provide an update on the work of the OECD Consumption Tax Technical Advisory Group?

QUESTION # 9: My Business Account

TEI commends the CRA on improvements in the My Business Account registration process. Our members report, however, that some businesses continue to face significant challenges as they attempt to register their businesses and provide the required information. For example, the CRA has not always permitted the working level manager in a registrant's tax department to be the contact person for purposes of registration in the system; instead, a senior company executive must serve in that role. This creates significant inefficiencies for businesses and the CRA, since the tax manager, rather than the senior executive of the business, generally has the knowledge and training necessary for completing the My Business Account setup process. Has the CRA received comments directly from registrants on the effectiveness of the My Business Account program delivery, particularly concerning the registration process itself? Does the CRA have a national resource person that a registrant may contact where the My Business Account registration process bogs down?

ANSWER # 9: My Business Account

1) The CRA understands that there are difficulties being experienced by larger organizations that have more complex corporate structures (that will often include many subsidiary accounts), and that official signing authorities may often be far removed from day-to-day operations. For this reason, the CRA has been working closely with TEI members to:

    i) educate;

    ii) improve the online registration/authorization processes; and

    iii) assist all large business in gaining online access to their secure tax information.

    However, as the CRA seeks to improve these processes, it must also continue to meet its obligation to fully protect a businesses' confidential tax/payroll information, and to ensure that this information only be shared with persons who are legitimately authorized to see it.

2) The CRA will continue to meet with local chapters of the TEI to walk their members through the online registration process and to offer follow-up assistance.

3) Beginning in October of 2013, the CRA will also introduce a new online business authorization process that will streamline the current process even further.

4) During the meeting, CRA contact information will be provided to TEI members for use when they are having difficulties with the registration process.

QUESTION # 10: Billing Agent Election and Leases

Please consider the following scenario involving the billing agent election and leases of commercial real property:

An owner (Owner) of a commercial real property in Ontario has a tenant (Retailer) who entered into a ten-year lease on September 1, 2010, to occupy a portion of the premises to operate a retail store. Retailer has a relationship with another company (CanadaCo). For various business reasons, CanadaCo decided to become a party to the lease agreement with Owner, effective September 1, 2012. The original lease between Owner and Retailer was extinguished, and in its place a new Head Lease was entered into between Owner and CanadaCo and a new Sublease was entered into between CanadaCo and Retailer. All commercial terms of the original lease between Owner and Retailer were duplicated in the new Head Lease and Sublease. CanadaCo and Owner agree that CanadaCo will direct Retailer to make the rent payments (plus HST) on the Sublease to the Owner. For greater certainty, there is no general agency agreement between CanadaCo and Owner. Owner will include the HST collectible on the Sublease when calculating Owner's net tax for Owner's GST/HST Return. Owner and CanadaCo have duly completed Form GST506, *Election and Revocation of an Election between Agent and Principal*.

Owner, CanadaCo, and Retailer are all GST/HST registrants, residents of Canada, and engaged exclusively in commercial activities. The commercial real property has been used exclusively in commercial activities since its construction.

(i) Please confirm that Owner and CanadaCo are eligible to complete the *Election and Revocation of an Election between Agent and Principal* (Form GST506) in these circumstances and that Owner is required to remit and account for the HST collectible on the payments made by Retailer pursuant to the Sublease, subject of course to Owner and CanadaCo being jointly and severally liable for remitting the HST.

(ii) Please confirm that even where the election noted in (i) is available and has been made by Owner and CanadaCo with respect to the tax payable on the supply made pursuant to the Sublease, CanadaCo is required to pay to Owner the HST applicable on the Head Lease and Owner is required to remit the HST on the supply made pursuant to the Head Lease.

(iii) Please confirm that Retailer is required to retain documentation with Owner's GST/HST Registration number in order to support Retailer's ITC on the HST paid pursuant to the Sublease.

ANSWER # 10: Billing Agent Election and Leases

(i) Subsection 177(1.11) of the *Excise Tax Act* (ETA) allows a registrant billing agent and a supplier to make a joint election under subsection 177(1.1) of the ETA so that the billing agent can account for the GST/HST on behalf of the supplier. This election is available only where the billing agent acts as agent in charging and collecting the consideration and tax payable in respect of a supply made by the supplier, but does not act as agent in making the supply.

It is a question of fact whether a registrant is acting as a billing agent for purposes of subsection 177(1.11) of the ETA. The facts indicate that Owner is not a billing agent in the scenario described, because Owner is merely receiving amounts that CanadaCo has directed Retailer to pay to Owner, and is not performing the actions of a billing agent. To be clear, Owner is neither preparing nor sending bills, nor is it actively charging and collecting consideration and tax on behalf of CanadaCo. Therefore, Owner and CanadaCo are not eligible to make a joint election under subsection 177(1.1) of the ETA.

However, GST/HST Policy Statement P-131R, *Remittance of Tax Collected by a Person other than the Supplier in Limited Circumstances*, may apply to the scenario described, since Owner is not a billing agent, but it is collecting the tax on the supply made by CanadaCo, and none of the exceptions to P-131R apply.

Subsection 221(1) of the ETA imposes an obligation on CanadaCo to collect the tax on the supply to Retailer under the Sublease. Subsection 225(1) of the ETA requires CanadaCo, when determining its net tax calculation for a particular reporting period, to include amounts that became collectible as or on account of tax under Division II in the reporting period. This is required whether or not CanadaCo actually collects the tax.

Where a person other than the supplier collects an amount as or on account of tax under Division II, the ETA also requires that person to include the amount collected in its own net tax calculation. In the scenario described, Owner would be required, under subsection 225(1) of the ETA, to include the HST collected from Retailer in its net tax calculation.

It is not the CRA's intention to collect tax twice on the same supply in such a situation. Accordingly, where the supplier and another person are both required to account for an amount as or on account of tax, the accounting of the amount and the remittance of any resulting positive amount of net tax by one of the parties will discharge the liability of both parties. As such, where Owner accounts for the HST under the Sublease in its net tax calculation and remits any resulting positive amount of net tax, the liability of CanadaCo to account for the tax will be discharged. Administratively, P-131R does not require CanadaCo to include taxes collected and accounted for by Owner in CanadaCo's net tax calculation where CanadaCo's liability is discharged based on the actions taken by Owner.

(ii) The facts indicate that there are two supplies being made in the scenario described: first, Owner is making a supply of real property to CanadaCo pursuant to the Head Lease, and second, CanadaCo is making a supply of real property to Retailer pursuant to the Sublease.

Regardless of whether the election noted in (i) is available with respect to the second supply, CanadaCo is required to pay the HST applicable on the supply Owner made to CanadaCo pursuant to the Head Lease, and Owner is required to include that HST in its net tax calculation. This is in addition to the HST collected by Owner, and paid by Retailer, in respect of the second supply.

(iii) The *Input Tax Credit Information (GST/HST) Regulations* (the Regulations) outline the documentary requirements for claiming ITCs, which may include the name and the GST/HST registration number of the supplier or the intermediary in respect of the supply. As defined in section 2 of the Regulations, "intermediary" of a person, means, in respect of a supply, a registrant who, acting as agent of the person or under an agreement with the person, causes or facilitates the making of the supply by the person. The facts state that there is no general agency relationship between CanadaCo and Owner. As such, Owner does not cause or facilitate the supply by CanadaCo, and therefore Owner does not meet the definition of "intermediary" in the Regulations.

Consequently, having Owner's GST/HST registration number on any documentation related to the supplies under the Sublease would not meet the requirements of the ETA for claiming ITCs. Retailer is required to retain documentation with CanadaCo's GST/HST registration number, in order to support Retailer's ITC for the HST paid pursuant to the Sublease.

QUESTION # 11: Online Form Completion and Processing

a. Online fillable forms could benefit from system refinements. For example, a registrant completing GST Form RC4607, *GST/HST Pension Entity Rebate Application and Election*, can complete an allocation to various Qualifying Employer portions with up to four significant digits after the decimal point (*e.g.*, 81.9624%). Only the first two digits after the decimal point, however, are retained in the form, and there is no notification to the person completing the form that rounding is being performed in the background. Instances occur where the automatic rounding results in greater than 100% of the claim being allocated to the Qualifying Employers included in the form. For example, one registrant calculated a rebate claim of $31,088.31, but due to rounding done by the form in the background $31,089.42 (or 100.01%) was allocated to five Qualifying Employers. While the difference was small, fixing it required significant effort (see (b) below). Since Form RC4607 does not provide a grand total of the rebate claim assigned when an allocation is made to more than one Qualifying Employer, none but the most vigilant will catch these discrepancies even with a pre-filing review of the form. TEI submits that CRA should review its online fillable forms and find a solution to prevent these errors such as a message or other notification where the particular form is undertaking rounding logic behind the screens.

b. CRA rejected the rebate claim discussed above at the desk audit level because the allocation to the Qualifying Employers was $1.11 greater than the reported total rebate claim to be distributed. CRA did not contact the registrant before issuing the Notice of Assessment which rejected the claim in its entirety. The registrant now faces a roughly $30,000 assessment and filing a Notice of Objection to resolve the $1.11 discrepancy. Would CRA consider providing guidance to its officers who process online fillable forms on minor variances arising from unseen rounding of figures and encourage these officers to contact the registrants to find a more efficient solution than completely denying the claims?

ANSWER # 11: Online Form Completion and Processing

a) The CRA is continuously seeking ways to improve our online fillable forms and welcomes suggestions to make these forms more user friendly. As a result of the suggestion made, the CRA is currently updating Form RC4607, *GST/HST Pension Entity Rebate Application and Election,* to add a **Total** field on the form which will add all of the qualifying employer amounts on line C of part E or line E of part F of the form and verify against section G of part C of the form. This will ensure that total amounts match in the future.

b) In this particular case, we have contacted the client and resolved the matter to the client's satisfaction. To ensure that this type of situation does not reoccur, the CRA will raise the tolerance level within the system to accommodate minimal amounts.

QUESTION # 12: Documentary Requirements for Procurement Cards
(Finance only)

Following the issuance of CRA Notice 199, *Procurement Cards – Documentary Requirements for Claiming Input Tax Credits*, in June 2005, working groups of TEI's Canadian Commodity Tax Committee and the Department of Finance attempted to develop a modified list of documentation requirements for companies using procurement cards ("pcards").

After much productive dialogue between TEI and Finance via conference calls, meetings in Ottawa, and a national survey of TEI member companies, TEI proposed (1) eligibility criteria for companies engaged in 100% commercial activity that could elect to use the modified program, and (2) tax recovery factors that would be acceptable for CRA commodity tax audit purposes.

Unfortunately, the reallocation of Finance resources to support harmonization efforts in Ontario and British Columbia in late 2009-2010 resulted in the suspension of further work on the pcard project.

TEI believes that a solution was close at hand; we request an update on the status of the pcard project and a commitment to finalize this more efficient alternative to Notice 199.

QUESTION # 13: Excise Tax on Insurance Premiums

Part I of the ETA imposes a 10-percent tax on insurance premiums against risks in Canada that are placed with:

- An insurer authorized under the laws of Canada or a province to transact the business of insurance, if the contract is entered into or renewed through a broker or agent outside Canada; or

- An insurer not authorized under the laws of Canada or a province to transact the business of insurance.

The statute provides that the tax does not apply "to the extent that the insurance is not, in the opinion of the Commissioner, available in Canada.[5]" The term "not available in Canada" is not defined in the ETA, and the only reasons CRA deems acceptable are the unavailability of the particular class of insurance from authorized insurers or a lack of market capacity at the time a taxpayer purchases that class of insurance. The latter exception has not been defined.

Certain companies in the oil and gas industry have recently been informed by their CRA auditor or CRA Appeals Officer that CRA has reviewed and revised its interpretation and assessing positions related to the Insurance Premiums Tax with respect to the following issues:

1. The determination whether a contract of insurance is "available in Canada": CRA's stated position is that the only acceptable reasons a contract of insurance is not available in Canada are (i) that the particular class of insurance was not available from authorized insurers in Canada, or (ii) a lack of market capacity for that class of insurance existed in Canada at the time the taxpayer was seeking to purchase the insurance. In the past, very little guidance has existed in this area. Applying these criteria, CRA has analyzed market capacity broadly as availability anywhere in the Canadian market and ignored company specific facts that made it impossible for a particular taxpayer to obtain that insurance from a Canadian insurer.

[5] R.S., 1985, c. E-15, s. 4; 1999, c. 17, s. 147

After extensive consultation with companies in the oil and gas industry, CRA revised its position and now looks at the availability of insurance to the particular company rather than the market as a whole, thereby providing a fairer interpretation for an industry that is highly insurance-intensive. Will CRA provide thoughts on this matter and work with TEI in developing a technical bulletin to provide guidance to all taxpayers on this important issue?

2. To qualify for exemption from the Insurance Premium Tax, CRA requires taxpayers to provide five declination letters from licensed Canadian insurers each year the exemption is claimed. Very little guidance, however, has been provided on what must be included in these letters. What's more, since insurance companies have no business reason to issue declination letters (especially on an annual basis), many companies have encountered difficulty satisfying the requirement. CRA has stated that it is reviewing its policy and will provide useful detailed guidance to industry. TEI believes this requirement to be over-burdensome and requests the opportunity to work with CRA to develop a more appropriate test.

3. CRA Form E638A, Statement of Availability or Declination from Authorized Insurers – Tax on Insurance Premiums (Part I of the *Excise Tax Act*), sets forth the information and documentation necessary for claiming a declination for purposes of the insurance premiums tax. Before the release of Form E638A, the documentation used to substantiate declination claims differed from that required on Form E638A. During audits of years prior to the introduction of the form, situations have arisen where CRA auditors demanded documentation not required until the issuance of Form E638A. Will CRA provide its views on this approach?

ANSWER # 13: Excise Tax on Insurance Premiums

1) The CRA is currently in the process of revising Excise Taxes and Special Levies Notice ETSL68 and Memorandum X7-1 in order to provide more clarity with regard to our policy and administrative procedures. We would welcome the input of the Tax Executives Institute as we continue this process. Please provide us with any relevant information that you feel would assist us as we continue to update our policy and administrative procedures.

2) As indicated in question 1, the CRA is currently in the process of updating its procedures and administrative policy with regards to Part I Insurance. We would welcome the opportunity to include the Tax Executives Institute in this ongoing process. Our view is that the submission of five letters of declination certified by insurance companies is no longer necessary, and that instead, information by way of documentary evidence provided by a company to the effect that insurance coverage is not available to them within Canada would suffice. Please provide us with any input you feel might be of assistance as we continue to update and revise our policies and administrative procedures.

3) The role of an auditor both before and after the creation of form E638A is to determine the facts of any transaction based on documentary evidence. Ultimately, in order to qualify for the exemption, the taxpayer must be able to show that the insurance is not available within Canada. In this role, an auditor will ask for documentation that will prove that attempts were made to purchase the insurance from authorized insurers. This effort must be substantiated each time a contract of insurance is entered into or renewed and the filing of this form may or may not alleviate the need for the auditor to perform further verification.