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17 March 2016

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Re: Regulation 102 and Form RC473

Dear Mr. Hewlett:

This is to thank the several members of the CRA, including Mr. Mickey Sarazin, for taking the time to meet with our TEI working group, along with Department of Finance ("Finance") officials, on November 17, 2015 to discuss our concerns about the pending changes to the tax remittance and reporting requirements for non-resident business travelers to Canada and the CRA's proposed approach to certification of qualifying non-resident employers (the "Policy"). We found that discussion to be very productive, and we followed up on it by providing comments, which we emailed on December 31, 2015 regarding the Certification form. Additionally, we sent a letter dated January 15, 2016 summarizing the key

points discussed at the November meeting. Since that time, the CRA has released Form RC473 and related guidance on its website, in addition to providing a March 1st certification submission deadline (originally set at February 1st) in order to have the benefit of certification applied as of and from January 1, 2016. We understand the CRA is interested in seeing meaningful "uptake" on certification applications by that deadline. However, even with these welcome changes, many of our members still have significant concerns as they work through the requirements and burdens of certification. The purpose of this letter is to provide you with our observations on the Policy, and to make several recommendations in order to encourage corporations to apply for the certification.

While there may have been some differences in opinion as to the "right" thresholds, a consensus among stakeholders is that, below a certain threshold, Regulation 102 remittances and reporting should not be required. That is the essence of the legislative proposals. At an early stage, TEI (and other industry groups) consistently urged Finance to allow businesses that met the relevant threshold to self-certify, as opposed to having to go through a certification procedure with the CRA. The reason for this position was to reduce the administrative burden of businesses engaged in cross-border trade and commerce. That would also have been in line with the regimes used by many other countries, most notably our biggest trading partner and closest neighbor, the United States. Despite the CRA's assurances that its new certification form was designed to be simple, many TEI members are concluding that the burdens of this certification process and its related consequences unfortunately outweigh the benefits. Consider the following scenario which, while hypothetical in its specifics, represents actual concerns many of our members are facing and have expressed:

> Company X, a U.S. resident, has historically sent up to five employees to Canada in each of the past few years and expects to do so again for the current year, with each employee visiting for a few days up to a few weeks in total. The employees are not necessarily the same individuals from year to year, and they do not work on the same type of project (*i.e.*, Article V(9) of the Canada-US Treaty is not engaged). Rather, they travel to Canada mostly for internal meetings. Company X does not have a Business Number and, for the most part, it has not made R102 remittances in the past, nor has it completed any R102 reporting. Based on the applicable remuneration of the individuals travelling to Canada, and assuming an average annual remuneration of $150,000, Company X reasonably estimates that its total R102 remittance obligations per year could range from

$10,000 to $40,000, and that amount would be fully refundable to its employees if they were to file Canadian personal income tax returns.

Company X wants to apply for the RC473 certification but is told by its Canadian tax advisor it will have to do the following:

a) Complete Form RC473 – Upon reviewing the form, Company X does not understand why the information in Section 3 is necessary, as the legislative threshold is principally based on the number of days in Canada and treaty residence. Company X asks its advisor what would happen if its facts prove to be different from any of the responses to those questions, particularly the estimates. The advisor explains that CRA has indicated it does not intend to use the RC473 as an audit tool for prior periods but cannot confirm why those questions are being asked.

b) Complete Form RC1 – Company X does not have a Canadian Business Number. Also, upon reviewing the form, Company X notes a significant overlap with information required on the Form RC473, in addition to which Company X must provide a list of its officers and directors, and a copy of its certificate of incorporation or amalgamation.

c) Complete Form RC59 – Company X asks why the CRA is not relying on the information contained in the RC473, particularly because the contact person listed on the RC473 is already intending to discuss with the CRA matters pertaining to the RC473 and its related requirements. Having to file Form RC59 is largely duplicative of what is required on Form RC473.

d) Pro-actively track and record the number of days each qualifying non-resident employee is in Canada, his or her associated remuneration, and the associated Canadian tax exemption. Company X discusses this issue with a "Big 4" accounting firm and learns that its workforce tracking system cannot adapt to the 90-day / 12-month threshold, so Company X will simply have to use the 45-days-in-a-year threshold. Additionally, Company X also learns that the tracking system would need to be upgraded to track remuneration and qualitative information, such as the reasons for employee travel.

e) File Canadian income tax returns – This is not expected, as Company X's position is that, notwithstanding its employees' visits to Canada, it is not carrying on business in Canada (and does not have a permanent establishment in Canada), consistent with advice that it has received from its Canadian tax advisor.[1]

f) Make its books and records available for purposes of the CRA administering the RC473 certification. This seemed like a reasonable request in the context of the CRA ensuring that Company X's tracking of employee travel to Canada is reasonable, but that raises the question of whether this means making all of its books and records available for reviewing its T2 tax return. Company X is concerned that its certification could be revoked for not obliging the CRA on information requests that have little or nothing to do with Regulation 102.

g) T4 reporting – Company X is informed that while there will be no R102 remittance requirements for its qualifying non-resident employees, based on the number of days those employees are in Canada, Company X will have to establish a separate tracking of remuneration attributable to the employees' work in Canada to determine whether T4 reporting may still be required (*i.e.*, the $10,000 threshold referred to in proposed paragraph 200(1.1)(b) of the ITA). In light of the spirit of these proposals, this requirement places a seemingly unnecessary administrative burden on Company X, which will likely suffer additional expenses and burdens should it proceed with certification.

Company X could view the new rules as burdensome and may decide not to proceed with a certification application. This decision, however, would cause Company X to forego the benefit of not having to make anywhere from $10,000 to $40,000 in estimated annual R102 remittances, which would be fully refundable to its employees, as well as not having to complete R102 reporting for its employees who visit Canada. The above example illustrates why the present set of administrative rules do not go far enough. As a result, we recommend the CRA adopt several changes to its Policy.

[1] We understand CRA has updated the guidance on its website to indicate a T2 return is required to be filed only to the extent it is required pursuant to the Income Tax Act (Canada). While this change is welcomed, it underscores our requested extension of the March 1st deadline, as outlined in Recommendation #6 below.

Recommendations:

1) Eliminate the need for qualifying non-resident employers to complete Form RC1 if they do not already have a Business Number. CRA should be able to issue a Business Number on the basis of the information provided in Form RC473. We understand CRA has issued Business Numbers to corporations in certain circumstances notwithstanding that they have not filed Form RC1.

2) Eliminate the need for qualifying non-resident employers to complete Form RC59 if they have already authorized the representative listed in Section 2 of the RC473. CRA should be able to rely on the information provided in Form RC473 with respect to the years under certification, at least insofar as communications would be required in connection with Form RC473 or its requirements for the certification period.

3) Eliminate any references to filing applicable income tax returns on the RC473. Our example shows that there would be no need to file any corporate return, as Company X is not carrying on business in Canada (and does not have a permanent establishment in Canada). A qualifying non-resident employer's ongoing certification should not depend on a tax-return filing requirement when, under the rules in the Income Tax Act, there is no need to do so.

4) Eliminate boxes 19, 20, and 21 from Form RC473, or provide additional guidance to clarify CRA's intentions as to the use of such information, particularly as it may relate to audit implications for prior periods.

5) Support TEI's past request to the Department of Finance to eliminate the $10,000 remuneration threshold for determining whether T4 reporting must be made in respect of a qualifying non-resident employee, as currently set out in proposed paragraph 200(1.1)(b) of the Income Tax Regulations.

6) Extend the deadline for filing Form RC473 from March 1st to the later of June 1st or the date of Royal Assent of the Section 153/Regulation 102 legislative proposals, in order to have the certification be effective as of January 1, 2016. This will help to ensure the timely incorporation and communication of Policy changes, such as the recent proposal to remove the T2 filing requirement for maintaining certification, any changes that may be necessary to Form RC473 in light of further legislative changes, and any other

changes to be made such as those outlined herein. This would encourage more meaningful "uptake" of RC473 certification applications.

TEI believes that each of the recommendations outlined above will help to make the Policy, and the underlying legislative changes to Regulation 102, substantially more successful in terms of meeting the objective of reducing administrative burdens of businesses engaged in cross-border commerce. Ultimately, we believe it is better for the Canadian economy. Again, we thank CRA for taking the time to meet with us this past November to discuss this issue, and we look forward to continuing this dialogue. Should you have any questions about the points in this letter, please contact Mr. Grant Lee, Chair of TEI's Canadian Income Tax Committee, at 604.641.2502 (or grant_lee@hsbc.ca) or me, at 403.750.2278 (or lmoen@walton.com).

Respectfully submitted,

Tax Executives Institute, Inc.

Lynn Moen
Vice President for Canadian Affairs

cc: Alexandra MacLean, Director, Tax Legislation Division, Department of Finance (by email only)
Grant Lee, 2015-2016 Chair, TEI's Canadian Income Tax Committee (by email only)