TAX EXECUTIVES INSTITUTE, INC.

2014-2015 OFFICERS

MARK C. SILBIGER
President
The Lubrizol Corporation
Wickliffe, OH

C.N. (SANDY) MACFARLANE
Senior Vice President
Chevron Corporation
San Ramon, CA

JANICE L. LUCCHESI
Secretary

ROBERT L. HOWREN
Treasurer
BlueLinx Corporation
Atlanta, GA

PAUL T. MAGRATH
Vice President, Region I
AstraZeneca Canada, Inc.
Mississauga, ON

LINDA A. KLANG
Vice President, Region II
Lehman Brothers Holdings Inc.
Jersey City, NJ

PETER F. DE NICOLA
Vice President, Region III
FUJIFILM Holdings America Corp.
Valhalla, NY

JAMES D. HOLLINGSWORTH
Vice President, Region IV
United States Steel Corporation
Pittsburgh, PA

DAVID J. GOEKE
Vice President, Region V
Emerson Electric Co.
St. Louis, MO

J. MITCHELL FRANK
Vice President, Region VI
American Airlines
Ft. Worth, TX

WINIFER TONG
Vice President, Region VII
UPS
Atlanta, GA

DANIEL R. GOFF
Vice President, Region VIII
Xilinx, Inc.
San Jose, CA

DAMIEN HENNEKEN
Vice President, Region IX
Abu Dhabi Investment Authority
Abu Dhabi, UAE

ELI J. DICKER
Executive Director

W. PATRICK EVANS
Chief Tax Counsel

June 12, 2015

Please Respond To:
Paul Magrath
Finance Director, Tax
AstraZeneca Canada Inc.
1004 Middlegate Road
Mississauga, ON L4Y 1M4
905.804.4930
paul.magrath@astrazeneca.com

Ms. Alexandra MacLean
Director, Tax Legislation
Department of Finance
90 Elgin Street
Ottawa, Ontario
K1A 0G5

Re: Budget 2015 Regulation 102 Proposals

To Alexandra MacLean:

On April 21, 2015, as part of Budget 2015, the Government released proposals to provide relief from the withholding and remittance requirements that otherwise apply to certain non-resident employers of certain non-resident employees who perform work in Canada. On behalf of Tax Executives Institute (TEI or the Institute), I am writing to express our comments on the Government's proposals relating to Regulation 102 in the form of amended subsections 153(1) and 153(6) and new subsection 153(7) of the Income Tax Act (Canada) (the Proposals).

Background on Tax Executives Institute

TEI is the preeminent international association of business tax executives. The Institute's more than 7,000 professionals manage the tax affairs of nearly 3,000 of the leading companies in North and South America, Europe, and Asia. Canadians constitute approximately 15 percent of TEI's membership, with our Canadian members belonging to chapters in Calgary, Montreal, Toronto, and Vancouver. TEI members

TAX EXECUTIVES INSTITUTE, INC.

must contend daily with the planning and compliance aspects of Canada's business tax laws, including its treaties. Many of our non-Canadian members (including those in Europe and Asia) work for companies with substantial activities and investments in Canada. The comments set forth in this letter reflect the views of TEI as a whole, but more particularly those of our Canadian constituency.

TEI concerns itself with important issues of tax policy and administration and is dedicated to working with government agencies to reduce the costs and burdens of tax compliance and administration to our common benefit. In furtherance of this goal, TEI supports efforts to improve the tax laws and their administration at all levels of government. We believe that the diversity, professional training, and global viewpoint of our members enable us to bring a balanced and practical perspective to the issues raised by the Proposals.

Background

TEI has repeatedly encouraged the Government to reduce the compliance burdens associated with Regulation 102. The Institute's recommendations have been communicated through the pre-budget submission and consultation process, as well as many of TEI's liaison meetings with senior officials within the Department of Finance and Canada Revenue Agency (CRA). The principal reasons driving the need for Regulation 102 reform are:

- the onerous levels of administration and reporting imposed upon businesses and their employees;
- the resultant costs of compliance;
- the difficulty and impracticality in fully complying with these requirements for many businesses given the lack of *de minimis* exemption thresholds; and
- the absence of tax liability accruing to Canada in the majority of instances involving short-term business travelers to Canada from treaty-based countries.

Regulation 102 reform has tremendous significance for TEI's membership, and TEI applauds the Government's expressed interest, as stated in Budget 2015, in reducing red tape and excessive administrative and tax compliance burdens for businesses, particularly in relation to Regulation 102. The Proposals are a welcomed first step in addressing the administrative issues set out above, but without change, the Proposals will fall short of making meaningful progress in this burden-reduction effort. TEI fully supports the Government's interest in ensuring that properly exigible tax revenues are collected in connection with cross-border business travelers and that CRA has the ability to audit and verify such activities. Our objective in submitting these comments is to assist the Government in implementing a system that meets its needs and is practical, understandable and fair to businesses charged with complying with it.

With this background in mind, this letter provides specific recommendations for improving the Proposals. Before doing so, however, we provide an overview of the costs of compliance in connection with Regulation 102, based on estimates prepared by some of our membership.

Compliance Cost Overview

TEI estimates that the cost of compliance with Regulation 102 ranges from approximately $4,000 to $10,000 per inbound employee per year, when factoring in most direct and indirect costs. This estimate principally relates to complying with employee-by-employee filing and remittance requirements and the filing of personal tax returns for individuals who are otherwise exempt from tax in Canada by virtue of a tax treaty. The estimate does not consider capital investments in technology and related tracking and reporting systems. The variable costs that comprise these estimates are frequently attributable to internal resources (often involving tax, legal, HR and finance), as well as external service providers, and are typically incurred for items such as:

- preparation of Regulation 102 reporting records (i.e., T4 slips and T4 summary);
- preparation of employee tax returns in home country, as well as host country;
- preparation of tax equalization calculations and arranging for equalization payments between employees and their employer when necessary;
- technology systems monitoring and maintenance for tracking cross-border employee travel on a timely basis;
- assistance to employees in obtaining SINs or ITNs;
- use and maintenance of a "shadow payroll" system for making local remittances; and
- advisory work to establish procedures for handling short-term business travelers in different situations (e.g., when and how to use secondments, when and how to apply for and obtain waivers, and instances in which exemptions may be available, such as for conferences).

For a business that experiences only 20 business travelers inbound to Canada in a given year, the estimated annual costs of compliance would be anywhere from $80,000 to $200,000. If, however, a business were to have 200 short-term business travelers inbound to Canada in a typical year, which is not uncommon among larger businesses in Canada, the estimated annual costs of Regulation 102 compliance would range from $800,000 to $2,000,000. These are undoubtedly significant amounts. Of course, the costs of Regulation 102 compliance for a particular business could be significantly higher if it has additional inbound short-term business

travelers, or if it must make substantial investments in specialized employee tracking and reporting systems.

In light of these costs and the broader background context set out above, TEI submits the following three recommendations.

Recommendations

1) Exemption from reporting requirements related to Regulation 102

Government Proposal: For qualifying non-resident employers of qualifying non-resident employees, the Proposals would provide an exemption from employers' withholding and remittance requirements, but the attendant reporting requirements would remain in place.

Recommendation: TEI urges the Government to revise the Proposals to eliminate the T4-related reporting requirements when the exemption from employers' withholding and remittance applies. Such a change is necessary to make the proposed *de minimis* threshold a meaningful exemption with meaningful reductions in red tape and tax compliance burdens. Otherwise, businesses will continue to bear significant compliance costs, as outlined above, with no commensurate benefits to the Government. Exemptions from reporting requirements similar to those associated with Regulation 102 have been successfully adopted in the United States, the United Kingdom, Australia and other countries when certain thresholds are met. Should the Government conclude that some level of reporting for exempt employees is necessary, TEI would be pleased to meet and discuss alternative measures that address the Government's concerns and meaningfully reduce the red tape and tax compliance burdens that remain in the current Proposals.

2) Move to self-certification

Government Proposals: To qualify for the *de minimis* threshold exemption addressed above, the Proposals would require qualifying non-resident employers to be certified by the CRA at the time of the relevant payment. Further, such certification could be revoked under certain conditions. The introduction of a certification requirement directly conflicts with the Government's desire to reduce red tape and excessive business tax compliance burdens and should be eliminated.

Recommendation: Instead of creating an administrative hurdle to claiming the exemption, TEI recommends that the Government adopt a self-certification approach, such as the systems successfully implemented in the United States, the United Kingdom, Australia, and other countries with similar exemptions.[1] While this approach would result in less information

[1] For example, in the United States, a U.S. withholding agent is generally relieved from liability for U.S. withholding tax in this context if it receives from the nonresident employee and files with the Internal Revenue Service an applicable certificate documenting the nonresident employee's qualification for a withholding tax

reporting to CRA, it strikes the right balance between meaningful reductions in excessive administrative and compliance burdens and a conservative *de minimis* threshold (i.e., the 90-day threshold in the Proposals is far more restrictive than the 183 day threshold for treaty-exemption purposes).

TEI recognizes the need for CRA to be notified of employers availing themselves of the *de minimis* threshold exemption and to have access to an appropriate level of information for audit purposes. To this end, we propose that employers be required to file a simplified notification form with the CRA (which could include a statement certifying qualifying status) and to maintain adequate records to support the position on audit. This approach reduces compliance burdens inherent in the Proposals and is consistent with recommendations made to the Government by the Advisory Panel on Canada's System of International Taxation in its Final Report[2] (see, in particular, Recommendation 7.3 and related details in paragraph B.31 of Appendix B of the Final Report). TEI would be happy to provide input on information to be required in a simplified notification form.

3) Revise the 90-day threshold

Government Proposal: Under the Proposals, a qualifying employer seeking to benefit from the Regulation 102 exemptions would have to make a determination that an employee would not be in Canada for more than 90 days in any 12-month period that includes the time of payment.

Recommendations: TEI strongly recommends that the Government revise this threshold in two respects. First, because most business tracking systems are based on a calendar year (or other relevant fiscal period), the 90-day threshold should be applied to a fixed 12-month period that coincides with the employer's fiscal period (with necessary pro-rata adjustments for bona fide events that result in an employer changing its fiscal period). Absent such a change, businesses will be required to undertake expensive and time consuming efforts to implement new business and human resources tracking systems, which contradicts the Government's aim of reducing red tape and excessive administrative and compliance burdens. This suggested change is reasonable and appropriate because the 90-day threshold is supplemented by the other requirement for an employee to meet qualifying non-resident employee status—i.e., that the employee be exempt from Canadian income tax with respect to the payment because of a tax treaty.

Second, because the proposed 90-day threshold is applied to days "in Canada," businesses would have to track the location of their employees during vacation and personal days. It is simply not practical to require businesses to track their employees' personal activities

---

exemption. The withholding agent may rely on the certification unless it has actual knowledge or reason to know that representations made on the certificate may be false.

[2] *Enhancing Canada's International Tax Advantage, Advisory Panel on Canada's System of International Taxation* (December 2008) ("Final Report").

and whereabouts, and such an intrusion into their personal affairs may be prohibited under foreign privacy laws. Furthermore, given the significant buffer in the Proposals' exemption threshold (i.e., 90 days being less than half of the 183 day rule under most tax treaties) and the fact that an employer must be satisfied that the employee is not subject to Canadian income tax on the payment because of a tax treaty, TEI recommends that the 90-day threshold be modified to apply to the number of working days spent in Canada. These recommendations are not only consistent with the spirit of the Proposals, but also are necessary for meaningful progress to be achieved in reducing excessive compliance burdens on businesses in this area.

Additional considerations

The Proposals do not provide any relief from the Regulation 102 withholding, remittance and reporting obligations if either (i) the employee is not otherwise exempt from Canadian income tax with respect to the payment because of a tax treaty or (ii) the employer is not resident in a country with which Canada has a tax treaty. In addition to the recommendations set out above, TEI urges the Government to consider extending the Proposals so that they would also apply to payments to an employee where the relevant employer self-certifies that the employee meets either of the following tests:

(i) the employee spends less than 10 working days in Canada in the particular calendar year; or

(ii) the remuneration attributable to the employee's employment in Canada in the particular calendar year is less than $10,000.

While such a measure would extend the Proposals beyond treaty-exempt circumstances, it appears that employees who meet either of those thresholds represent truly *de minimis* tax revenues to Canada. In these instances, the administrative costs of complying with Regulation 102 likely exceed any consequential revenue loss, which would be partially offset by the administration and compliance savings that would accrue to both businesses and the CRA. In addition, should this additional recommendation be adopted, the Government could claim a very significant achievement in reducing red tape and excessive administrative and tax compliance burdens on businesses.

Conclusion

The Proposals are, directionally, an important first step toward achieving the Government's stated objective "to reduce the administrative burden of businesses engaged in cross-border trade and commerce." However, without additional measures in line of those recommended above, the Government's objectives will not be met and a significant opportunity will be lost. As we have offered in the past, TEI would be pleased to assist the Government in better understanding these concerns and in developing revisions to the Proposals that will lead to meaningful progress in this area while maintaining the integrity of the tax base and CRA's ability to conduct appropriate audits. We will contact you in the coming weeks to discuss

convening a meeting with the Department of Finance and/or the CRA to ensure that all perspectives are appreciated in developing any revisions to the Proposals.

TEI's comments were prepared under the aegis of its Canadian Income Tax Committee, whose chair is Grant Lee of HSBC. Should you have any questions about TEI's comments, please feel free to contact Mr. Lee at 604.641.2502 (or grant_lee@hsbc.ca) or Paul Magrath, TEI's Vice President for Canadian Affairs, at 905.804.4930 (or paul.magrath@astrazeneca.com).

Respectfully submitted,

Tax Executives Institute, Inc.

Mark C. Silbiger
International President

cc Brian Ernewein, General Director (Legislation), Tax Policy Branch, Department of Finance
Richard Montroy, Assistant Commissioner, Compliance Programs Branch, Canada Revenue Agency
Mickey Sarazin, Director General – Canada Revenue Agency