November 2016

2016 Canada Revenue Agency (CRA) Tax Roundtable

The annual Canada Revenue Agency (CRA) Roundtable Meeting was held in May of 2016. A number of CRA representatives were in attendance, along with representatives from the profession.

As in previous years, two concurrent roundtable sessions were held, one focusing on Income Tax matters and the other on GST matters. All participants also attended a general wrap-up session.

For more information on the session, or on the 2016 Roundtable, contact Director of Professional Services Larry Brownoff, CPA, CA at lbrownoff@cpaalberta.ca or call 1-800-232-9406.

The responses are provided by CRA for information purposes only and relate to provisions of the law and policies in force at the time of publication and are not a substitute for the law. Responses might not extend to all situations and are not determinative of the tax treatment of a specific taxpayer's situation.

Income Tax Questions

1. Electronic Services

(a) Given certain governments' intentions to eliminate/automate personal and business income tax returns, we note with interest the CRA's new Auto-fill program for individual returns. Accordingly, could the CRA provide a high-level overview of its long term plans with technology? What are some of the plans that are in the hopper?

(b) In recent years there have been significant improvements in both the electronic access to account information and the ability to electronically file tax returns for individuals and corporations. In contrast, the T3 *Trust Income Tax and Information Returns* must still be filed on paper. Does the CRA have any plans to add T3 electronic filing soon?

(c) Why does the CRA not allow trusts to submit T1013 forms along with T3APP forms for new trusts which do not yet have account numbers, just as it has allowed RC-59 forms to be submitted with applications for business numbers?

(d) Is the CRA, at some point, going to allow RC-59 forms to be filed online (as with T1013 forms) and if so, when is this expected to happen?

CRA Response

Part (a) - Answer 1

Some of the developments for "Auto-fill my return" for the next filing season include:

- the addition of more tax slips, including T1204, PRPP and RENT ASSIST
- improved messaging for the disability tax credit
- extension of the "Auto-fill my return" sessions for EFILERS and NETFILERS
- the delivery of an external refund set-off messages and with amount owing for EFILERS
- advising if another representative has accessed the "Auto-fill my return" service for the client in last 12 months for EFILERS
- an indicator will be passed to the software product if a T1135 was filed in the previous tax year
- an indicator will be passed to the software product if the client/individual has signed up for Manage Online Mail and direct deposit

Some of the services that are being developed with the use of the "Auto-fill my return" technology are:

- allowing individuals to automatically fill in parts of a current-year and one prior year income tax and benefit return through NETFILE certified software

- allowing authorized representatives to automatically fill in parts of a current-year and two prior year income tax and benefit returns through EFILE certified software
- a service whereby the notice of assessment would be available in the EFILE and NETFILE certified software the day after the return is submitted through the same software. Once the return is submitted, an immediate message will display to the user that includes info such as “your return has been assessed” and “your refund of $xx will be deposited into your account on <Date>.” The full notice of assessment would then be available for viewing via the software the day after.
- a service that will allow taxpayers or tax preparers the ability to use their existing tax preparation software to submit a T1 adjustment request electronically.

Part (a) - Answer 2

T2 is developing a somewhat similar program for corporations. Once authenticated, the user will be able to download the CRA-assessed T2 return and schedule data for a taxation year-end within the last three years that is complete and not under review. The software will then be able to bring this data forward to start building the next year’s return, or use it as a “clean copy” upon which to base an amendment request for that taxation year-end.

We also plan to make the assessed T2 return and schedule data available for viewing on MyBA.

The target date for both of the above initiatives is October 2017.

We will start accepting electronic filing of T2 returns from insurance companies. The target date for this initiative is October 2016.

With respect to Capital Dividend Account (CDA) balances, we have a phased plan to improve the current process in place for requesting T2 CDA balance requests.

As you may be aware, as of May 2015, we started accepting electronic filing of form T1135 *Foreign income verification statement for corporations*. Over the next couple of years, we plan to increase the number of similar forms that will be able to be electronically filed using T2 tax preparation software, either accompanying the T2 return or sent in separately.

We are also looking into the feasibility of implementing a number of further digital service enhancements such as:

- removing the restriction to electronically file a T2 return when there is an address change
- developing a simpler filing solution for very simple T2 returns
- enhancing our relationship with T2 software developers

Part (b)

As of January 2016, you can file 10 trust forms electronically using the CRA's secure Internet File Transfer service. You can file the following forms in XML format:

- T3D, *Income Tax Return for Deferred Profit Sharing Plan (DPSP) or Revoked DPSP*
- T3P, *Employees' Pension Plan Income Tax Return*
- T3S, *Supplementary Unemployment Benefit Plan Income Tax Return*
- T3RI, *Registered Investment Income Tax Return*
- T3ATH-IND, *Amateur Athlete Trust Income Tax Return*
- T3M, *Environmental Trust Income Tax Return*
- T3GR, *Group Income Tax and Information Return for RRSP, RRIF, RESP, or RDSP Trusts*
- T1061, *Canadian Amateur Athletic Trust Group Information Return*
- T3PRP, *T3 Pooled Registered Pension Plan Tax Return*
- T2000, *Calculation of Tax on Agreements to Acquire Shares (Section 207.1(5) of the Income Tax Act)*

This service is currently not available for the T3RET, *T3 Trust Income Tax and Information Return.* We realized that the CRA could let trust administrators and their representatives take advantage of XML filing sooner by starting with these 10 T3 trust tax returns. In keeping with the Government of Canada's commitment to be client-focused and more helpful to Canadians, the CRA will continue to streamline its online services and introduce new online options. We are exploring options for trust administrators and their representatives to file the T3RET electronically in the future.

Part (c)

The CRA does allow T3APP and T1013 to be sent together for new trusts with pertinent legal documentation. Please refer to the following link for further information: http://www.cra-arc.gc.ca/tx/trsts/t3pp/wh-eng.html

Part (d)

The ability to submit an electronic authorization for a business (that is processed in five days or less) has been available in the 'Represent a Client' portal since 2014. However, the CRA is also planning to implement an RC59 e-filing process using T2 software in October 2017.

2. Small Business Deduction Project

In late 2015, many corporations received CRA correspondence indicating they were reviewing their Small Business Deduction (SBD) claims. It appears as if the project was focused on business activity in the real estate sector (e.g., realtors and property management). Some members report being advised by CRA representatives that this project is, at least in part, the commencement of the "Personal Services Business (PSB) Project;" however, reclassification as Specified Investment Business Income (SIBI) also seems fairly common from practitioner comments.

Can CRA comment on the following:

(a) The overall results of the program to date, including the frequency of PSB and SIBI reassessments?

(b) How large was the project? That is, how many letters were sent, and what proportion of the targeted sector does this represent?

(c) Will the project be expanded to more corporations in the real estate sector?

(d) Will the project be expanded to other sectors and if so, can CRA advise which sectors have been selected or are under consideration?

(e) Are there common areas where CRA perceives SBD being incorrectly claimed that they would like to communicate to accountants and our clients?

CRA Response

Part (a)

No specific review with respect to Personal Services Businesses (PSB) was conducted as part of the 2015 Small Business Deductions (SBD) post-assessing review project. However, there was a SBD project that focused globally on those corporations that had claimed the SBD. As a 'specified investment business' generally does not qualify for the SBD, the CRA examined the type of business and revenue to determine whether the corporations were operating as an 'active business' versus a 'specified investment business.' Approximately 40% of the corporation returns subject to review under the SBD project were adjusted. Nineteen percent of the adjustments were due to non-compliance (no response to the CRA's initial contact letter) and 81% were adjusted because it was determined that the corporations were considered to be a Specified investment Business (SIB), as per subsection 125 (7) of the *Income Tax Act*.

Part (b)

Twenty-three percent of the corporations that were reviewed under the global SBD post assessing review project received contact letters.

Part (c)

No. A specific business sector was not targeted in the SBD project.

Part (d)

There are no plans to start targeting specific business sectors.

Part (e)

An analysis of the program results has not determined any common areas where the CRA might focus additional education efforts.

3. Various Job sites (Business vs. Personal Travel)

In a situation where a worker is required by their employer to go directly from their home to various job sites, there is uncertainty as to whether that travel would be considered personal or business. According to Technical Interpretation 2013-0507421E5, if an individual has multiple regular places of employment (RPE) and travels between them during the day, the trip from the individual's home to the first RPE and the trip home from the last RPE is personal. However, travel between RPEs is considered employment-related.

It is a question of fact whether a particular location is considered a RPE. An individual may have more than one RPE, even with multiple employers. A particular location may be considered a RPE even though the individual may only report to that location on a periodic basis (i.e., once or twice a month). However, a location may not be a RPE if, for example, the individual works at that location only once, or a few days in the year. In this case we assume the work location would qualify as a special work site.

(a) As indicated above, there is uncertainty as to whether a job site is a RPE if the employee performs work at the location more than a few days in the year, but less than once or twice a month. Is the CRA able to provide clarification as to which factors it would consider in determining if a work location is an RPE?

(b) Is a home office an RPE if work is performed there on a periodic basis (i.e. once or twice a month as indicated above)?

(c) Can the CRA provide a list of common factors they consider in determining if a work location is an RPE or a special work site?

CRA Response

Part (a)

Canadian employers offer diverse work environments, and each employee's employment circumstances can vary. Consequently, the determination as to whether a particular location is considered to be a regular place of employment (RPE) requires a review of all the relevant facts of the particular situation. This decision must be made on a case-by-case basis.

In general, any location at or from which the employee regularly reports for work or performs the duties of employment is considered a regular place of employment. An employee may have more than one regular place of employment, which can change from time-to-time because of the nature of the employment situation. It is the regularity and frequency of attendance at a place where the employee reports to work or performs the duties of employment that is taken into account when determining a regular place of employment.

Where an employee works at a particular location for an extended period of time, that place will most likely be considered that employee's RPE. Where an employee works at multiple locations, the regularity of the reporting and the nature of the duties carried on at this location is considered as well as the frequency. For example, if an area manager reports for work at three different stores throughout the year to carry out supervisory duties as required, each of these locations could be considered a regular place of employment. In this example, the employee's travel from home to any of the stores and travel back from a store to her home would be considered personal. Travel between the stores would be considered business travel.

However, depending on the circumstances and facts, a location may not be a RPE for an individual if, for example, the individual works at that particular location only once during the year or perhaps for only a few days in the year.

Part (b)

A home office may be considered an RPE of an employee. In order to make this determination, however, a review of all the relevant facts of the particular situation would need to be conducted.

The CRA's general position is that travel between an employee's home and their employer's business location is personal, even when the employee has a home office that is a regular place of employment.

Part (c)

CRA does not have a list of common factors used to determine if a work location is an RPE.

However, in order for a location to be considered a special work site, all three of the following conditions must be met:

1. The duties performed by the employee at that location must have been of a temporary nature,

2. The employee maintained at another location a self-contained domestic establishment (SCDE) as the employee's principal place of residence that was available for his occupancy, and that was not rented by the employee to any other person, and to which by reason of distance, the employee could not reasonably be expected to have returned daily from the special worksite,

3. The employee's duties required the employee to be at the special work site away from his or her principal place of residence for not less than 36 hours.

If an employee works at a special worksite for an extended period of time, it is our view that the special worksite will most likely be the employee's regular place of employment. Accordingly, any allowance paid by the employer for the use of the employee's vehicle for transportation between his or her temporary place of residence and the special worksite would be a taxable benefit under paragraph 6(1)(b) of the *Act*.

4. Repeated Failure to Report Income Penalty

Proposed revisions to Subsection 163(1) penalties were announced in the 2015 Budget, with draft legislation for consultation released July 31, 2015. CRA indicated in the 2015 T1 and T2 Guides that they are restricting assessments of such penalties consistent with the draft legislation, and the 2016 Federal Budget confirmed the Government of Canada's intention to proceed with these amendments.

(a) Can CRA confirm that they are applying the revised limits to these penalties in accordance with the draft legislation for 2015 and subsequent taxation years?

(b) To what extent, if any, is the CRA exercising its discretion over penalty assessments to apply these limits to penalties applicable to taxation years prior to 2015?

(c) Specifically, is consideration to reducing penalties for 2014 and prior years automatic, at the discretion of the CRA representative involved, or restricted to applications for Taxpayer Relief?

CRA Response

Part (a)

The CRA is preparing to implement the changes to the subsection 163(1) penalty for the repeated failure to report income as confirmed in the 2016 Federal Budget (originally announced in the 2015 Federal Budget). As you may be aware, the legislative amendments are included in *Bill C-15, Budget Implementation Act, 2016, No. 1*, which is being studied by the House of Commons and Senate finance committees. As the proposed change to the penalty is effective starting with the 2015 tax year, we are carefully monitoring the progress of these amendments considering the timing of the CRA review programs that could give rise to reassessments of income tax returns for the 2015 tax year, including this penalty.

Part (b)

The proposed amendment to the repeated failure to report income penalty, when enacted, will apply to tax years that begin after 2014. The penalty assessments issued in accordance with the existing law for a tax year prior to 2015 are not affected.

Subsection 220(3.1) of the *Income Tax Act* provides the Minister with the discretion to waive or cancel all or any portion of any penalty otherwise payable under the *Act*. Generally, this discretion is exercised where circumstances exist that justify a taxpayer's inability to satisfy a particular tax obligation or requirement under the *Act*. Therefore, the CRA will not cancel or reduce a previously assessed repeated failure to report income penalty based on the fact that the calculation of the penalty under existing law is greater than the amount that would be assessed under proposed legislation. The review of a taxpayer relief request will give consideration to all the relevant facts and circumstances of a taxpayer's situation surrounding the failure to report an income amount, including whether the taxpayer has demonstrated reasonable efforts to comply with their reporting obligations. Each request will be reviewed and decided on its individual merits.

Part (c)

No, the proposed legislation when enacted applies on a prospective basis for tax years that begin after 2014, and the penalties assessed for tax years prior to 2015 will not be reduced automatically or by making a taxpayer relief request to the CRA. As indicated in question b), the CRA will generally exercise the discretion under subsection 220(3.1), where the circumstances substantiate the taxpayer's inability to satisfy the particular tax obligation or requirement under the Act.

5. Collections Practices (Plenary Question)

Consistent with the current economic climate, many of our members have questions about CRA's current collections policies.

(a) What are CRA's criteria for implementing arrangements for payment over time? Specifically, we have had some reports of collections agents requiring taxpayer produce evidence they are unable to finance the tax debt through third-party lenders (for example, letters from banks). Can CRA comment on any policies in this regard?

(b) Is it necessary to pursue interest relief through Taxpayer Relief, or is Collections able to consider relief in the context of payment arrangements? If this is not restricted to Taxpayer Relief, what factors would be considered by Collections, and who would the taxpayer, or their representative, discuss such relief with?

(c) Have CRA's collections policies been reviewed in recent months in light of economic conditions, whether in general or in specific industries (such as oil & gas)?

A collections officer recently advised that CRA standard procedure for reassessments in excess of a *de minimis* amount (based on the specifics of that case, somewhere between $100,000 and $250,000) is to contact the taxpayer without delay, and initiate collections action where at least some payments ($5,000 was the minimum demanded in this instance) were made. Subsection 225.1(1) generally prohibits CRA undertaking collections action within 90 days of an assessment or reassessment (outside of certain exceptions). These restrictions are well set out in the recently updated IC98-1R5, as well as the prior IC 98-1R4. With the above in mind:

(d) Can you clarify CRA's current practices regarding collections within 90 days of an assessment/reassessment? Specifically, are collections officers trained in/aware of the limitations on collections activity within 90 days of assessment? Is it CRA policy to propose collections action contrary to this legislation? If not, what steps should practitioners advise their clients take in similar circumstances?

CRA Response

Part (a)

If a taxpayer is unable to pay the full amount they owe, they may be able to borrow funds from a third party lender to pay their tax debt or make a payment arrangement with the CRA to pay the tax debt over a period of time. Collection

Officers are asked to verify a taxpayer's ability to pay and borrow funds before agreeing to a mutually satisfactory payment arrangement. In order to confirm a taxpayer's capacity to borrow funds, a Collections Officer may ask for evidence, such as a letter from a bank or third party lender, confirming that they are unable to finance the tax debt.

Part (b)

Yes, it is necessary to pursue interest relief through the Taxpayer Relief program which has been administered by the Appeals Branch since 2011. Taxpayer Relief is for the relief of penalties and interest only and any requests need to be discussed with Taxpayer Relief representatives working in Appeals.

Part (c)

The CRA's collections policies are reviewed on an ongoing basis. In situations such as this, the CRA works with taxpayers to come to a mutually acceptable arrangement based on each taxpayer's individual ability to pay or borrow funds.

Part (d)

Collections Officers can contact taxpayers to ask for payments within 90 days of an assessment or a reassessment, even when statutory collections restrictions exist. However, where these restrictions exist, the CRA is precluded from taking legal measures to collect a debt until the 90-day period has expired, unless it invokes Jeopardy provisions via a Court order. Practitioners can advise clients that the CRA is allowed to ask for voluntary payments within the 90-day period, even where collections restrictions exist.

It should be noted that for certain statutes that the CRA administers there are no collections restrictions and the CRA can initiate legal measures within 90 days of an assessment or reassessment. This applies to payroll deduction accounts under the *Income Tax Act*, GST/HST debts under the *Excise Tax Act*, as well as various other statutes that the CRA administers.

6. Team Leader Identification (Plenary Question)

Some of our members have encountered CRA agents who are not providing a team leader name and phone number. From what we understand, it is CRA policy that an agent is required to provide team leader names when asked. Can the CRA confirm our understanding? Assuming our understanding is correct, can the CRA provide a recommended course of action for practitioners when an agent refuses to provide the team leader's name?

CRA Response

The Collection Directorate's instruction to CRA collection agents is to provide taxpayers with the name and telephone number of their team leader, when asked. As a result of your enquiry, we have prepared a communication to all CRA collection agents reminding them to do this.

If CRA collection agents refuse to provide their team leader's name and telephone number, taxpayers should call the CRA's Debt Management Call Centre and ask for the name and telephone number of the Assistant Director, Revenue Collections that is responsible for their account. The number is 1-888-863-8657.

7. Shareholder Appropriations

The CRA appears to be applying subsection 15(1) more aggressively than in recent years. In the past the application of subsection 15(1) was restricted to situations where a benefit was conferred on a shareholder, such as a corporate expenditure found to be non-deductible because it was primarily personal in nature (for example, personal travel expenses). More recently, we are seeing subsection 15(1) applied almost automatically where a corporate expenditure is considered non-deductible, regardless of the reason. For example, we recently encountered the application of subsection 15(1) in circumstances where a corporation adjusted inventory to the lower of cost and fair market value (in accordance with subsection 10(1)) at the end of its fiscal year. The auditor included an amount in the shareholder's income per subsection 15(1) because of a disagreement in respect of the amount of the inventory adjustment.

There is abundant case law, textbooks, CRA technical interpretations and commentary on the appropriate application of subsection 15(1). The fact that we seem to be seeing application in circumstances that it clearly does not apply suggests that auditors and their team leaders are not receiving appropriate training in this area or that the CRA has had a change in assessing policy.

We would appreciate your comments in this regard.

CRA Response

There has been no change in assessing policy in applying subsection 15(1). The subsection is broad and can apply to various situations where a benefit is conferred by a corporation on a shareholder. These include the payment of personal expenses by the corporation, acquisition of or improvements to property of the shareholder by the corporation, transfers of corporate property to the shareholder at less than fair market value and appropriations of property or funds of the corporation by the shareholder. We are unable to comment on the situation referred to in the question without all the necessary background and facts.

If the taxpayer or representative has an issue with a proposed adjustment and cannot resolve the matter with the auditor, they can contact the auditor's team leader to discuss the issue further. In addition, there is always an opportunity to provide representations in response to any proposed assessment.

8. Pre-Assessment Reviews

The ability to upload data through the Represent a Client portal seems beneficial to both practitioners and CRA, reducing both delays and administrative costs. Is CRA considering expanding this process to include responses to pre-assessment reviews? If so, is there a timeline for doing so?

CRA Response

Yes, the CRA is planning to expand its e-initiatives to include the ability to submit supporting documents for pre-assessment reviews electronically. These initiatives are still in the planning phase and there is no current set timeline for completion.

9. Subsection 74.4(2)

Can the CRA comment on factors it takes into consideration when deciding if "one of the main purposes" of a transfer or loan is reasonably considered to benefit a designated person. The language used in subsection 74.4(2) suggests there can be more than one main purpose. However, the word "main" in "main purpose" can only be properly interpreted to be the most important purpose where there is more than one purpose. If there are other motivating factors these factors would be "secondary" or "other" purposes.

CRA Response

The phrase "one of the main purposes" is used in many specific anti-avoidance provisions in the *Income Tax Act*. The CRA determines, based on the facts of each case, whether, among various objectives that might be sought in making a loan or transfer, one of the main purposes was to reduce the income of the individual and to benefit a designated person.

In Income Tax Rulings Document #2001-0067725 (E) entitled *74.4 and estate freezes*, we stated that in a situation where a trust of which the beneficiary is a minor child of the freezor acquires common shares of the freezor's Holdco on an estate freeze, the provisions of subsection 74.4(2) will generally apply, subject to subsection 74.4(4). The taxpayer would have to rebut the presumption that "one of main purposes" of the transfer was not to reduce the income of the individual and benefit a designated person.

10. Foreign Tax Credits – Supporting Documents

Based on recent requests by the CRA, it appears that the administrative policy of the agency for support for foreign tax credits (FTCs) has changed. Previously, taxpayers provided copies of foreign tax returns as support for claiming FTCs and this was accepted by the CRA. More recently, the CRA is requesting tax transcripts (for U.S.-based income) or a certified copy of the foreign tax return. Obtaining a tax transcript from the Internal Revenue Service or the various State taxation authorities is a time consuming process.

(a) Is there a reason for this change?

(b) Will the CRA provide extended time to respond to these requests, as the typical 30 days is not a sufficient time frame to respond with the required documentation?

(c) Does the CRA have any recommendations for taxpayers if they are experiencing difficulties in obtaining information from foreign tax authorities?

(d) Will taxpayers have any issues with FTCs that are reported on a Canadian information slip (i.e. T3, T5 or T5013)?

CRA Response

Part (a)

In 2015, a decision was made to change the requirements for acceptable supporting documentation related to claims for the foreign tax credit (FTC) made by individuals with U.S. sourced income. This decision was made in response to an observed increase in the trend of incorrect reporting and incomplete submission of documents relating to this type of income.

It should be noted that for all other countries, the CRA has always required a copy of the taxpayer's foreign income tax return and assessment notice or equivalent document from the foreign tax authority. To be equitable in our treatment of all taxpayers, it was determined that the best course of action was to require the same level of proof from individuals reporting U.S.-sourced income.

Part (b)

The CRA realizes that the changes made to its requirements in respect of supporting documents for the foreign tax credit related to U.S. source income were new in 2015, and acknowledges that there was an understandable transition period for taxpayers and their representatives in this regard. Since we are now almost one year later, there is a certain level of expectation that a more proactive approach has been adopted to ensure that the required supporting documents are requested or obtained early, in anticipation of a possible review by the CRA.

Although reasonable requests to extend the timeframe for responding have always been accepted, it is recommended that taxpayers and their representatives not wait until CRA asks for these supporting documents before requesting them. According to the IRS website "most requests will be processed within 10 business days." If a request for the account transcript is made promptly, there would be a reduction or elimination of issues related to the time frame for submitting a copy if the CRA asks for documentation.

Based on our recent findings, the IRS has a very structured process for requesting tax account transcripts online or through the mail using Form 4506-T. Information about requesting transcripts from the IRS is available on their website at https://www.irs.gov/Individuals/Get-Transcript-FAQs. In addition, the majority of the U.S. states have an online system which allows the taxpayer to print his/her "account statement" which would confirm the taxpayer's final tax liability.

As always, it should also be noted that if additional time is needed to respond to a request for supporting documents, an extension may be requested.

Part (c)

In response to feedback received over the past few months, the CRA has implemented a new option to support a claim for the federal foreign tax credit. The below is an excerpt from our current correspondence:

- *If you are unable to provide a copy of a notice of assessment, transcript, statement, or other document from the applicable foreign tax authority indicating your client's foreign income and final tax liability, we will accept proof of payment made to or refund received from them.*

  This may be in the form of bank statements, cancelled cheques, or official receipts. The following information has to be clearly indicated:

    - *that the payment was made to or received from the applicable foreign tax authority;*
    - *the amount of the payment or refund;*
    - *the tax year to which the payment or refund applies;*
    - *the date that the amount was paid or received.*

Note: If you are submitting photocopies of a cancelled cheque, you will need to copy both sides of the cheque, unless the front has been micro-encoded by the banking institution.

Part (d)

Canadian information slips continue to be acceptable supporting documents for the FTC.

11. Voluntary Disclosure Program – Second Disclosure (Plenary Question)

With respect to the Voluntary Disclosure Program, we understand that CRA may accept a second disclosure in circumstances where the taxpayer's non-compliance was due to factors beyond the taxpayer's control. Can the CRA provide some examples of what it considers to be "beyond the taxpayer's control?" Also, we understand that the CRA may consider a second disclosure of an unrelated issue (GST or other tax); however, this position has never been published. We would like the CRA to confirm that this is the case, even when the second disclosure may also include (among other issues) a disclosure of the same issue from the first disclosure.

CRA Response

Two examples of what could be considered "beyond the taxpayer's control" are:

- A taxpayer makes a disclosure for their un-filed returns for the past four years. The disclosure is accepted under the VDP and the returns are processed. After they have been accepted under the VDP, the taxpayer gets an amended T4 from his employer and wishes to make a second disclosure, as the late-filing penalty would apply to this additional income.
- An estate makes a disclosure which includes a T1135 form for foreign assets over $100,000. After the disclosure has been accepted, the executor unexpectedly receives a statement from another foreign bank.

Taxpayers are expected to remain compliant after using the VDP. However, if the nature of the error or omission being disclosed in the second disclosure is different than that of the first, CRA will accept it provided all four conditions are met. A valid disclosure must meet **all** of the following conditions:

- your disclosure is voluntary (made before you become aware of any compliance action taken by the CRA against you);
- a penalty applies to it;
- the information is at least one year overdue; and
- the information is complete.

12. SRED Programs

Based on stakeholder recommendations made during the consultation on contingency fees, there have been a number of changes to the SR&ED program, including extra funding to CRA in support of the SR&ED program ($5M over two years for direct outreach plus $15M over two years to focus more resources on reviews was noted in the Budget Plan 2013 publication). Since January 1, 2014, CRA has been collecting information through Part 9 of the T661 regarding the involvement of SR&ED claim preparers.

A total of $20M in funding was to be provided to the CRA over a two-year period to allow for outreach, presumably related to the FTCAS program and similar initiatives, along with the hiring of new staff to allow CRA to review a higher percentage of claims. Can CRA comment on their measurement of the success of these new initiatives associated with this funding, and whether the recently-implemented resourcing changes are expected to be maintained into the future?

With regard to data collection, we would like to know what statistics have been aggregated to date and whether CRA has identified any potential next steps to be taken based on the data gathered. Can CRA share high-level statistics on the information compiled or any insights related to it?

CRA Response

With regard to the Scientific Research and Experimental Development (SR&ED) Tax Incentive Program, the CRA's commitments are two-fold: (1) ensure that businesses are aware of the program and can access the benefits as easily as possible, and (2) administer the program with fiscal integrity. In the 2013 Federal Budget, the Government provided the CRA additional resources to strengthen the administration of the program. To this effect, the CRA has implemented five initiatives.

To ensure claimants "*get it right from the start,*" the CRA developed the First-time Claimant Advisory Service (FTCAS), which was launched in January 2014. This service provides claimants with a tailored educational session to help them understand the program's requirements so that they can file successful claims in the future. Since its launch, over 2500 new claimants have been provided with FTCAS. The feedback has been very positive from claimants, and the CRA intends to continue to provide this service.

In January 2014, the CRA also piloted interactive webinars that provide an overview of the eligibility requirements of the program and allowable expenditures. Since that time, over 1400 businesses and tax-preparers have participated in an SR&ED webinar. Based on the feedback received from the participants, the CRA will expand this initiative and offer industry-specific or topic specific webinars, along with continuing to offer the general webinars.

In September 2014, the CRA launched four new videos on its website and YouTube channel. The videos focus on four topics: an overview of the program, the type of work and expenditures that qualify for the tax incentives, how to calculate the investment tax credit, and how to file a claim. These videos are used to promote the SR&ED program and also educate claimants. Since 2014, the videos have been downloaded over 95,000 times.

Along with helping businesses access the SR&ED program, the CRA also is required to protect the fiscal integrity of the program. The CRA uses multiple, integrated activities to encourage businesses to prepare their claims in compliance with the legislation, including reviewing claims and imposing penalties (when warranted), for which the CRA received additional resources. The CRA has always used and will continue to use these compliance measures.

To effectively select for review claims at high-risk for non-compliance, the CRA uses a risk assessment process, which it continually enhances. In January 2014, the CRA revised the SR&ED claim form to require more claim preparer information, and this information will be used to strengthen the program's risk assessment process.

The CRA continually works on improving its business intelligence in order for it to effectively select and review claims at risk of non-compliance. The CRA continually conducts statistical analyses based on a number of sources of information, including the claim form and review results. With regard to the claim preparer information on the claim form, no statistics have been aggregated or analyzed at this time. In order to conduct a sound statistical analysis, sufficient data must be collected. Consequently, the CRA will wait until such time as there is sufficient data available.

13. Civil Penalties and Penalty Relief (Plenary Question)

With the Supreme Court's decision in the *Guindon* case (2015 SCC 41) in July 2015, can CRA comment on what, if any, impact this decision will have on CRA's approach to civil penalty assessments?

Paragraph 90 of the decision notes that the Minister's factum suggested that the taxpayer relief provisions of subsection 220(3.1) could be available to an individual assessed with a civil penalty. We would be interested in CRA's comments on circumstances where a person who has engaged in culpable conduct would be considered an appropriate candidate for taxpayer relief.

CRA Response

CRA policies and procedures have not changed in light of the Guindon SCC decision. The taxpayer relief provisions of subsection 220(3.1) could be available to an individual assessed a civil penalty under the *Income Tax Act* ("*Act*"), including a third-party penalty. In a case where a taxpayer is submitting a request for taxpayer relief pertaining to a third-party penalty assessment, CRA would follow the policy that is already in place for cases of relief requests from a gross negligence penalty assessed under the *Act*. This policy is described in paragraphs 37 and 38 of the IC07-1 *Taxpayer Relief Provisions* as outlined in the following link http://www.cra-arc.gc.ca/E/pub/tp/ic07-1/ic07-1-07e.pdf and shown below:

Gross Negligence Penalties

37. Relief from a gross negligence penalty assessed under the Act can be considered under subsection 220(3.1). However, since the levy of these penalties indicates a degree of negligence and absence of care and diligence on the part of the taxpayer in the conduct of their tax affairs, the cancellation of a gross negligence penalty may be appropriate only in exceptional circumstances.

38. Given the nature of a gross negligence penalty, it is more appropriate for a taxpayer to dispute the assessment of such a penalty by filing a notice of objection. For more information on a taxpayer's right of objection, see Pamphlet P148, Resolving Your Dispute: Objection and Appeal Rights Under the Income Tax Act on the CRA Web site.

14. Certificates of Compliance

A T2062 is required to be filed by non-residents disposing of certain assets, including Canadian real estate (Subsections 116(1) to (3)). In the event the vendor fails to file the T2062 form, the purchaser is required to remit 25% of the gross proceeds. Can the CRA advise how such remittance is to be paid to CRA where the vendor has either not complied with the requirement to file Form T2062 or has not provided a copy of that filing, or any Certificate, to the purchaser? This would commonly mean the purchaser has no tax identification number for the vendor.

CRA Response

In the case where a non-resident vendor has not complied with the requirements of Section 116 and/or has not provided a Certificate of Compliance to the purchaser, the purchaser is required to remit the amount required as per subsection 116(5) and/or subsection 116(5.3).

The purchaser is not required to provide a vendor identification number.

When making the remittance to the CRA, the purchaser should attach a letter specifying that the remittance relates to subsection 116 (5) or 116(5.3). The letter should also provide the following information:

- the purchaser’s full name and address
- the non-resident vendor’s name
- the non-resident vendor’s address (if available)

- a description of the property (as much detail as possible)
- the date of the acquisition
- a copy of the purchase agreement and/or other documents, such as the Statement of Adjustments, to support the purchase price.

15. Reimbursement for Home Office (Plenary Question)

A practitioner recently reported an experience with a CRA auditor who indicated that a monthly rental payment from a corporation to its shareholder was required to be reported on CRA form T4A *Statement of Pension, Retirement, Annuity, and Other Income*, the corporation should complete CRA form T2200 *Declaration of Conditions of Employment* and the shareholder should make any applicable claim for expenses in respect of the workspace in his residence on CRA form T777 *Statement of Employment Expenses*.

Can CRA advise whether this is their interpretation for all such claims, as a matter of CRA policy? We would appreciate CRA's comments on the following variations on such payments from corporation to shareholder/employee:

(a) A monthly payment based on estimated cost reimbursement for costs related to the workspace in the individual's home;

(b) A reimbursement of actual costs; that is, the corporation reimburses the home owner (who is also a shareholder) for a portion of actual, receipted expenses (mortgage interest, property tax, insurance, maintenance, utilities), based on the portion of the square footage of the residence which is used by the corporation for business purposes;

(c) A rental payment to the owner of the residence (who is also the shareholder/employee), which we suggest would appropriately be reported on CRA form T776 *Statement of Real Estate Rentals* and not CRA form T777 *Statement of Employment Expenses*.

(d) Does a shareholder need to become a registrant, collect GST and claim ITCs in the situation where an associated corporation (that is a GST registrant) is renting office space located in the shareholder's home?

CRA Response

In general, a monthly rental payment from a corporation to its employee/shareholder would not be a typical arrangement for a lease of space. We consider such a payment to be meant to compensate an employee/shareholder for costs related to use of office space in the home and would not generally be reported as rental income included on a T776.

In addition, the T2200 and T777 would only apply to situations where the shareholder is also considered an employee of the corporation. Where this is the case, the employee would have to meet the conditions of a workspace in home under subsection 8(13) in order to claim expenses. The expenses claimed would be reduced by any payments received from the corporation.

Parts (a), (b) and (c)

> In each of the examples, a monthly payment based on estimated or actual costs related to a work space in home could be deducted by the corporation, if reasonable in the circumstances. Generally, we would evaluate reasonableness in relation to the actual costs incurred by the shareholder. We would also expect, at a minimum, that the space is needed to file records, book appointments, take business phone calls and perform other administrative functions, as the case may be, and that there is no other space available to the corporation.
>
> If the amount exceeds a reasonable amount, the excess should be reported by the shareholder as a benefit under subsection 15(1).
>
> The comments in paragraphs 2 - 8 in archived IT-352R2, which deals with Employee’s Expenses, should be referred to. Even though the bulletin refers to employee expenses, the same principles apply would apply in an employee/shareholder situation. Therefore, no mortgage interest or capital cost allowance (CCA) should be claimed.
>
> Also, where there is a personal use element to the home office, a further adjustment may be required to determine applicable business use.
>
> In any case, any payment or reimbursement should be included in the income of the employee shareholder subject to deductions available under subsection 8(13).

Part (d)

> Where the total amount of all revenues (before expenses) from the shareholder’s worldwide taxable supplies from all its businesses and those of its associates is $30,000 or less in any single calendar quarter and in the last four consecutive calendar quarters, the shareholder would be considered a small supplier and would not be required to register and account for GST/HST.

16. Nursing Homes and Attendant Care

Nursing homes and attendant care are significant medical expenses that generate significant confusion and controversy. In Technical Interpretation 2014-0529851E5, CRA indicated no list of qualifying facilities exists in respect of such claims. However, we are aware of situations where CRA assessors have advised tax preparers that a specific facility is not on such a list, and that this is why claims were disallowed in the course of pre-assessment or post-assessment review.

a) Does CRA maintain such lists in their assessing divisions, which Rulings was unaware of? If so, are these formal and accessible to all assessors, or informal, maintained by local CRA offices? Is it possible for these lists to be made publicly available for the benefit of taxpayers, the facilities themselves and their advisors?

In Technical Interpretation 2015-0596311I7, CRA concluded that a Segway is not sufficiently similar to a standing wheelchair to be considered a "wheelchair" within the ordinary meaning of the term and therefore the cost will not be an eligible expense under paragraph 118.2(2)(i) of the *Income Tax Act* ("Act"). CRA also noted that a Segway is not a device that is "exclusively designed" for individuals with mobility impairments and therefore does not qualify under section 5700 of the *Income Tax Regulations* ("Regulations").

Consider that while a vehicle like a Segway is not "exclusively designed" for individuals with mobility impairments, it may be modified for such individuals in order to allow them to operate it. With the above in mind, can the CRA comment on the following:

(b) Would the CRA consider modifications made to a Segway in order to allow an individual with a mobility impairment to operate it safely to be an eligible medical expense under Regulation 5700(n) or any other relevant provision of the Act or Regulations?

(c) Consider a bicycle or trike, where modifications are made to allow an individual lacking ordinary development of their limbs, or paraplegic or quadriplegic, to use the vehicle. Would CRA agree that the cost of these modifications would fall within Regulation 5700(n)? We note that the term "vehicle" does not refer specifically to motorized vehicles. If purchased with the intention to modify, would CRA consider any portion of the initial cost to be an eligible medical expense?

CRA Response

Part (a)

Technical Interpretation 2014-0529851E5 is correct in that there is no official CRA list of qualifying facilities in respect of these claims. In response to complaints from these facilities due to multiple communications from CRA for the same information and in an effort to reduce the delay in completing reviews related to nursing homes, CRA created an internal list of qualifying facilities to keep track of those facilities that had already been contacted. This list has proven to be very useful to assessors and beneficial to Canadian taxpayers as it reduces the amount of time taken to review claims related to nursing homes.

Procedures are in place that instruct employees not to disallow a claim because an institution does not appear on this internal list. If an institution does not appear on the list, it is simply because they have not been contacted in the past. Employees may then undertake additional information gathering to determine the eligibility of the claim. There are no plans make this internal information publicly available as it is not necessarily all-inclusive and is subject to regular updates and adjustments.

Thank you for the information you have provided. A national reminder will be distributed shortly to ensure that established procedures are being consistently followed.

Part (b)

Medical expenses that are eligible for the medical expense tax credit are limited to those described in subsection 118.2(2) of the *Act*. Income Tax Folio, S1-F1-C1, *Medical Expense Tax Credit* (Folio S1-F1-C1), describes these expenses and the conditions that must be met for any particular expense to qualify.

Paragraph 1.118 of Folio S1-F1-C1 states that under paragraph 118.2(2)(m), eligible medical expenses include amounts paid for devices or equipment for use by the patient, where the device or equipment:

- is specified by section 5700 of the Regulations;
- is prescribed by a medical practitioner;
- is not described in any other paragraphs of subsection 118.2(2); and
- meets such conditions described in section 5700 of the Regulations, as are applicable to its use or the reason for its acquisition.

Under paragraph 5700(n) of the Regulations, a device designed exclusively to enable an individual with a mobility impairment to operate a vehicle is a qualifying device for the purposes of paragraph 118.2(2)(m) of the *Act*. The word "exclusively" is used in this paragraph to strictly limit the devices that are deductible.

Thus, an amount paid for devices that are designed exclusively to enable an individual with a mobility impairment to operate a vehicle (including a Segway), for example, levers, knobs and handles that allow the individual to control steering, speed, braking and signaling, would be an eligible medical expense under paragraph 5700(n) of the Regulations, providing that the requirements under paragraph 118.2(2)(m) of the *Act* are also satisfied.

Part (c)

In our view, a bicycle or tricycle is a vehicle for the purpose of paragraph 5700(n) of the Regulations. Therefore, to the extent that devices are designed exclusively to enable a person with a mobility impairment to operate either a bicycle or tricycle, the amount paid for these modifications could also be eligible medical expenses under paragraph 5700(n) of the Regulations.

There are no provisions in the *Act* that would allow the amount paid to purchase either a bicycle or tricycle, where the intention is to modify after purchase, as an eligible medical expense.

Paragraph 118.2(2)(i) of the *Act* allows an amount paid for a wheelchair as an eligible medical expense. While this provision would not encompass a standard bicycle or tricycle in the definition of wheelchair, we have previously opined that a wheelchair could include a tricycle wheelchair or geriatric chair with wheels.

17. Failure to File Form T1135 (Plenary)

In Technical Interpretation 2015-0572771I7, CRA confirms that failure to file CRA Form T1135 on time results in the assessment of penalties under subsection 162(7), which is in Part I of the *Act*. Therefore, if the taxpayer is liable to a penalty under subsection 162(7) for a late filed Form T1135, the assessment of the penalty must be made within the normal reassessment period, pursuant to subsection 152(3.1), for Part I unless one of the exceptions provided in subsection 152(4) applies. The final paragraph of this Technical Interpretation suggests that the normal reassessment period that is relevant for Form T1135 is the normal reassessment period of the income tax return for that taxation year.

(a) Can the CRA confirm that a taxpayer who failed to file Form T1135 cannot be assessed with a penalty under subsection 162(7) of the *Act* for failing to file Form T1135 after the normal reassessment period in respect of a taxation year?

(b) Does the CRA consider failure to file Form T1135 to be one of the exceptions to which subparagraph 152(4)(a)(i) would apply?

(c) Given the comments in Technical Interpretation 2012-0462951C6, would CRA require a taxpayer for whom they accept a Voluntary Disclosure related to failure to file Form T1135 to complete that form for:

   i. those years still within the ordinary reassessment?
   ii. those years for which taxpayer relief can be applied to waive penalties?
   iii. all years for which such filing was required?
   iv. some other set of years?

and to what extent, if any, would CRA consider penalties must be assessed, and cannot be waived?

CRA Response

Part (a)

Subsection 233.3(3) of the *Act* requires that a reporting entity for a taxation year or fiscal period file Form T1135 on or before the taxpayer's filing due date for the year.

Subsection 162(7) of the *Act* provides a penalty for the failure to file an information return and for the failure to comply with a duty or obligation imposed under the *Act* or the Regulations. If a taxpayer is liable to a penalty under subsection 162(7) of the *Act*, the assessment of such penalty must be made within the normal reassessment period, as defined in subsection 152(3.1) of the *Act*, unless one of the exceptions specified in subsection 152(4) of the Act applies.

It should also be noted that under paragraph 152(4)(b.2) of the *Act*, the normal reassessment period of a taxpayer for a taxation year is extended for an additional three years if:

- form T1135 was not filed on time by the taxpayer, or a specified foreign property held by the taxpayer at any time during the year was not identified, or was improperly identified, on Form T1135; and
- fhe taxpayer has failed to report income from a specified foreign property on their income tax return for the year.

Part (b)

Where T1135 has not been filed on time but paragraph 152(4)(b.2) of the *Act* does not apply, pursuant to subparagraphs 152(4)(a)(i) and subparagraph 152(4.01)(a)(i) of the *Act*, an assessment or reassessment in respect of a penalty under subsection 162(7) of the *Act* for such a failure may be made after the taxpayer's normal reassessment period but only if it can reasonably be regarded as relating to any misrepresentation made by the taxpayer or a person filing the taxpayer's return of income for a taxation year that is attributable to neglect, carelessness or willful default or any fraud committed by the taxpayer or that person in filing the return or in supplying any information under this *Act*.

In our view, the failure to file a Form T1135 where one is required pursuant to subsection 233.3(3) of the *Act* constitutes a misrepresentation for the purposes of subparagraph 152(4)(a)(i) of the *Act*. However, the question of whether such misrepresentation is attributable to neglect, carelessness or willful default or any fraud committed by the taxpayer or the person filing the return or in supplying any information under this Act is a question of fact. Generally, the Minister would have to, at least, prove that the taxpayer or the person filing the return made an error in failing to file Form T1135 and, although that error may have been made in good faith, it was an error that a prudent and conscientious person would not have made.

Part (c)

In order for a disclosure to be considered complete and be accepted under the Voluntary Disclosures Program (VDP), the taxpayer would have to complete the T1135 for all years for which such filing was required.

Under the VDP, penalties can be waived if the disclosure meets the four criteria of the program, the disclosure must:

- be voluntary;
- be complete;
- include information that is at least one year past due, and
- involve a penalty or potential penalty.

If these criteria are not met, the VDP cannot waive the penalties.

18. Graduated Rate Estates and Qualified Disability Trust (Plenary)

(a) The 2015 T3 Trust Guide provides four codes for the type of Testamentary Trust. It seems odd that no code is listed for a Qualified Disability Trust (QDT). How should such Trusts, with tax years ended after December 31, 2015, be identified so CRA knows why they are eligible for graduated rates? Will CRA assume any Testamentary Trust not indicated to be a Graduated Rate Estate, but claiming graduated rates, for years ended after December 31, 2015 is a QDT?

(b) Given the new definition of “graduated rate estate” (“GRE”) in subsection 248(1), it will be very common that most estates, created by operation of law on the death of a person, will meet the definition of a GRE for deaths that occur after 2015. The legal representatives of the estate need to make a positive election for the estate to be considered a GRE. The implications for not making the election are large (including the estate not being eligible for graduated tax rates, no eligibility for subsection 164(6) loss carry-backs and other implications) and there are no regulations that enable for such a designation to be late filed and therefore the general common law principles for late filed designations must be considered (see, for example, Lussier). The common T3 software, as referred to above, does not automatically designate an estate to be a GRE. Given the Department of Finance’s view that there can only be one estate of a deceased individual, would the CRA consider working with software developers to make the designation of an estate to automatically default to a GRE when preparing T3 returns?

CRA Response

Part (a)

According to the legislative changes, a Qualifying Disability Trust (QDT) trust type is available after 2015 and therefore will not be eligible for the graduated rates until trust files its 2016 return. A QDT is also required to file an election, on a prescribed form, for every year the trust files as a QDT. The QDT will also have a new trust type code assigned that will be required when filing the 2016 return. The trust type code and the election will assist CRA in the identifying the trust type at the time of filling. The QDT filing information, including the trust type code, will be in the 2016 T3 Guide. The CRA anticipates that the T3 guide will be available to the public late in the fall of 2016.

Part (b)

Under the legislative changes announced, the estate must designate itself, in its first T3 return of income for the first taxation year after 2015, as the individual graduated rate estate (GRE). This will be completed when the T3 return (that has a tax year end within the 36 month period from the date of death) is filed using the trust type code 903, has the SIN and date of death of the individual who the estate was created for.

Multiple trusts may be created upon the death of an individual and only one of these trusts can be designated as a GRE. Having software default the trust type to a GRE would force our assessing system to choose the first trust filed in the given tax year as the GRE in cases where more than one trust has been created and filed. This designation must be made by the trust to comply with legislation.

If the designation for the trust to be a GRE is omitted in error, an adjustment request containing the elements required for the designation and the rationale for the omission from the original filing may be submitted to the CRA.

19. Online Mail (Plenary)

CRA has been heavily marketing its online mail service. While quite efficient in the right circumstances, we are concerned with the risk of taxpayers being unable to access correspondence, especially time-sensitive correspondence like Assessments. Can the CRA please comment on the following?

(a) Although CRA's instruction notes are quite clear, many taxpayers do not read these details. They assume that their correspondence will come to them directly by email, and fail to understand they must register for My Account to access online mail. Given the data they need to register will be on their Notice of Assessment, this seems potentially disastrous. Will the CRA confirm whether a registrant for Online Mail is also registered for My Account, and require My Account registration be completed as a requirement for Online Mail participation?

(b) When a taxpayer dies, all access to their My Account information is cancelled. It cannot be restored to a representative without a T1013 signed by all Executors, submitted and processed on paper. When an individual registered for online mail dies, will their correspondence continue to be uploaded, deferring access by anyone but the CRA until representative access is processed? If regular mail is restored on the taxpayer's death, will CRA also send physical copies of online mail sent within some period of time prior to the death?

(c) Similarly, what happens when a taxpayer becomes disabled, and can no longer access My Account on their own behalf? They will also lose access to CRA correspondence.

(d) Why did CRA add an online mail advertisement to Form T183? This seems to require practitioners who would previously have received the signed form and included the return in a batch transmission to instead review each form for an email address, open and modify software data files to add email addresses, and only then transmit the return. In addition to the obvious inefficiency imposed on practitioners, including the fact that many practitioners use admin staff who are not proficient with data entry in the tax software, adding this extra requirement in the late days of the personal income tax season seems to invite data entry errors resulting from time pressure, which will result in taxpayers losing access to their CRA correspondence.

Please note that, given the above issues and other concerns, many practitioners recommend against their clients registering for online mail. The risk of missing an important deadline is simply too great.

CRA Response

Part (a)

When a taxpayer signs up for online mail CRA sends a registration confirmation email advising the taxpayer they will receive an email notification when there is online mail to view in their My Account secure online service. They are advised to go to the CRA website to register for My Account or update their email address.

However, if a taxpayer has not yet received full authentication for My Account (security code entered) they will have the ability to view a condensed version of the notice which will provide assessed amounts. To view complete details of the notice of assessment they will need to enter their security code and be fully authenticated.

Part (b)

When a taxpayer is deceased, and the CRA has been notified; their account is updated and any online mail registration will be automatically cancelled. After the online mail registration is cancelled, CRA correspondence will be sent by regular paper mail.

CRA has the ability to provide a copy of a notice issued prior to the date of death regardless if it was printed and mailed, or issued electronically. However, any request to issue a copy must be made by a legal or authorized representative.

Part (c)

A taxpayer's legal representative would have authority to act on their behalf and choose to cancel the online mail registration or access the taxpayer's online mail in My Account.

Part (d)

Online Mail is an important strategic initiative for CRA. Over 50% of T1 returns filed in Canada come in through EFILE, however, only 1.5% of new online mail registrations came through EFILE last year.

As a result, we added the promotional banner to the T183 to ensure each client was aware of the option of participating. As you are aware, the T183 must be signed before a return of income is transmitted through EFILE. For that reason, it was felt that the interaction between EFILER and Client at the moment of signing the T183 was a viable opportunity to promote the service.

We understand that this initiative may require changes to office procedures at certain EFILERs to ensure that the email address you transmit is accurate.

As always, we invite suggestions on improving take-up for online mail for EFILE clients. If CPA members are willing to offer alternate solutions to ensure every client is provided the opportunity to sign up, we'd appreciate receiving your input for the future.

20. Acquisition of Control

The occurrence of a loss restriction event for a corporation causes a year end to be triggered and restrictions to be placed on the ability of the corporation to utilize losses that have been incurred and accumulated by the corporation. A loss restriction event occurs when there has been an acquisition of control of a corporation by a person or a group of persons.

Assume that A and B who are a group each own 20% of the voting shares in the corporation. C, D and E who are unrelated persons also each own 20% of the shares and none of these people comprise a group either among themselves or with A and B.

(a) If A and B each acquire 10% of the shares from C and D respectively, they will collectively own 60%. Please confirm that this will be an acquisition of control by the group comprised of A and B.

(b) If the corporation issues 25 additional shares to each of X and Y, the shares owned by A and B will now represent 40% of the issued shares. Assuming that none of C, D, E, X or Y are comprised of a group either among themselves or with A and B, it would appear that no acquisition of control would have occurred even though A and B no longer control the corporation. Could you please confirm?

If each of A and B later acquire 15% of the shares held by X and Y, they would collectively own 90 of the 150 issued shares, being 60% of the issued shares. Could you please advise as to whether the purchase of these additional shares by A and B would constitute an acquisition of control by them? We note that A and B did control the corporation when they owned 60% of the issued shares but they ceased to control the corporation when the shares owned by them were diluted to represent only 40% of the issued shares.

CRA Response

In new Income Tax Folio S1-F5-C1 *Related persons and dealing at arm's length* in paragraph 1.20, the following comments are made:

"In the case of a closely-held corporation (for example, where there are two or three unrelated shareholders, none of which individually controls the corporation) the CRA considers that there is a presumption that the shareholders of such a closely-held corporation will act together to control the corporation. In order to rebut this presumption, it would be necessary to show that no one is controlling the corporation and that the decision-making process in the corporation is effectively deadlocked. "

In the situations described in the question, there are at least five shareholders involved so we unable to determine whether A and B would acquire *de jure* control and if subsequent changes to shareholdings would cause changes or a reacquisition of control.

If we can infer from the question that A and B are acting in concert, then we agree that there would be an acquisition of control once they acquire 60% of (presumably voting) shares, and reacquisition of control later when they later return to 60% share ownership, everything else being equal.

21. Low Rate Income Pool (LRIP)

The LRIP is computed for corporations which are not CCPCs. When a corporation ceases to be a CCPC the corporation's opening LRIP balance is computed under Subsection 89(8), generally referring to various amounts at the end of the immediately preceding year (that is, immediately prior to ceasing to be a CCPC). Variable C in the formula represents accumulated losses, basically the losses which could have been claimed if the corporation had unlimited income and capital gains in the immediately preceding taxation year, less any amounts actually deducted in that year.

Assume Opco ceased to be a CCPC on January 1, 2016, and in its taxation year ended December 31, 2015, it realized capital and non-capital losses totaling $100,000. It had no undeducted losses carried forward from previous taxation years. Does CRA concur that the amount of Variable C would be nil – that is, that losses realized and not utilized in the immediately preceding year are not considered in the computation of an opening LRIP balance?

CRA Response

The issues raised in this question are currently under review by the CRA, no response is available at this time.

GST Questions

Question 1

Schedule VI, Part V, section 15.1 zero-rates supplies of continuous transmission commodities where (in part) the first seller maintains evidence satisfactory to the Minister of National Revenue of the subsequent exchange of the commodity by the first buyer. Can you elaborate on the documentation that must be kept to meet this evidentiary requirement?

CRA Response

In order for the "first seller" to zero-rate the supply of the continuous transmission commodity to the "first buyer" referenced in Section 15.1 of Part V of Schedule VI, the "first buyer", in addition to the other requirements as set out in this provision, must supply evidence satisfactory to the Minister to the "first seller" that the continuous transmission commodity (CTC) has been supplied to a registrant and all or part of the consideration is property of the same class or kind delivered to the first buyer outside Canada.

The CRA would accept invoices and/or written agreements of the CTC exchanged between the first buyer and the registrant. The documentation should contain such information as would be required to determine the following:

- The CTC exchanged is of the same class or kind purchased.
- The place of delivery of the CTC to the registrant inside Canada.
- The place of delivery of the exchanged CTC to the first buyer outside Canada.
- Identity of the registrant including their BN.

Question 2

Subsection 272.1(2) provides that where a member of a partnership acquires property or a service for consumption, use or supply in the course of activities of the partnership but not on the account of the partnership, the partner is eligible to claim an ITC for the tax paid.

Can you please elaborate and provide a couple of examples of when an acquisition would be considered to be made by a partner for consumption, use or supply in the course of activities of the partnership but “not on account of” the partnership?

CRA Response

It is question of fact whether a particular property or service is acquired by a member of a partnership for consumption use or supply in the course of the partnership’s activities but not on the account of the partnership as required by subsection 272.1(2) of the ETA. Some factors to consider in determining whether subsection 271.1(2) applies may include the relevant provincial partnership law, the partnership agreement, and whether the partner receives separate consideration for the property or service.

For example, Partner Inc. is a partner of Partnership A (not a limited partnership). Partnership A is a GST/HST registrant and is engaged exclusively in commercial construction activities (i.e. in commercial activity). Partner Inc. acquires certain construction equipment that is used 100% in the construction activities of Partnership A. Partner Inc. has no activities other than holding its partnership interest in Partnership A and using its equipment in Partnership A's construction activities. Partner Inc. receives no remuneration from Partnership A other than a distribution of partnership profits based on its original investment under the Partnership Agreement. The provisions of the Partnership Agreement also state that Partner Inc. will not be reimbursed by Partnership A for the acquisition, operation or maintenance costs of the equipment used in Partnership A's construction activities.

In this situation Partner Inc. acquired the equipment for use in the course of the partnership's activities but not on the account of the partnership. Pursuant to subsection 272.1(2), for the purpose of determining ITCs in relation to the equipment, Partner Inc. would be deemed to be engaged in the construction activities of Partnership A. Further to the Canada Revenue Agency's administrative policy outlined in GST/HST Policy Statement P-216, Partner Inc. may register for GST/HST purposes and claim ITCs in relation to the GST/HST it incurred on the acquisition of the equipment that it used in Partnership A's commercial activities, provided all the other requirements for claiming ITCs are satisfied.

If you have a specific fact situation and wish to have an interpretation of subsection 272.1(2) of the ETA, please contact GST/HST Rulings and provide all of the relevant information.

Question 3

Will CRA provide any additional clarification to Notice 284 and the use of bare trusts, nominee corporations, etc. in real property situations? For instance, at times parties will refer to an entity as a "bare trust" even though it clearly exhibits managerial or operational control of the joint venture activities. CRA auditors are not looking past the use of the title "bare trust" when the operator does not meet that definition under the Income Tax Act. Some direction would be appreciated on how we should be approaching these situations when the venture is under audit.

CRA Response

GST/HST Policy Statement P-106, *Administrative Definition of a "Participant" in a Joint Venture*, states the CRA's administrative definition of "participant" for purposes of section 273 of the ETA. In order to be an operator of a joint venture for purposes of the election, a registrant must first be considered a participant in the joint venture. As stated in the policy statement a "participant" means:

a) a person who, under a joint venture agreement evidenced in writing, makes an investment by contributing resources and takes a proportionate share of any revenue or incurs a proportionate share of the losses from the joint venture activities; or

b) a person, without a financial interest, who is designated as the operator of the joint venture under an agreement in writing and is responsible for the managerial or operational control of the joint venture.

For a person to be considered to have managerial or operational control of a joint venture the person must have the authority to manage the joint venture's daily activities without requiring the input or approval of the other participants. Evidence of a person having the necessary managerial or operational control may include having the authority to engage personnel or contractors on behalf of the joint venture. Where the person does not engage staff to perform any of the operator's duties, it is doubtful the person would be considered to have the managerial or operational control of the joint venture. Additionally, the person would not be considered to have the managerial or operational control of a joint venture merely as a result of completing the GST/HST returns in respect of the joint venture's activities.

However, managerial or operational control does not necessarily require 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 necessary to run the joint venture. If a person has no independent powers, discretion or responsibilities and its primary responsibility is to hold title to the property for the benefit of the other participants and carry out limited functions solely at the direction of the participants, the person would not be considered to have the managerial or operational control of the joint venture and thus would not be considered to be a participant in the joint venture.

For purposes of the section 273 joint venture election, a "bare trust" which is a bare trust at law cannot be considered the operator of a joint venture. A bare trust at law merely retains legal title to assets with the beneficial owner(s) retaining beneficial ownership and authority for any other actions in relation to the assets. A nominee corporation may be the trustee of a bare trust. Further information on the nature of bare trusts and the GST/HST is outlined in GST/HST Technical Information Bulletin B-068, *Bare Trusts*.

Generally, a nominee corporation provides the use of its name to the beneficial owners of the assets. Nominee corporations are also generally characterized as shells which do not perform activities other than holding assets on behalf of beneficial owners. All other functions performed by the nominee corporation are at the direction and control of the beneficial owners.

Where the only function of a nominee corporation is to hold title to a joint venture's assets and 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.

The terms "nominee corporation" and "bare trust" may be used somewhat loosely by businesses. As a result, a so-called nominee corporation or so-called bare trust may in fact have the managerial or operational control of a joint venture. Where this is the case, the so-called nominee corporation or bare trust may be a participant in the joint venture for GST/HST purposes. Whether a person has the managerial or operational control of a joint venture is a question of fact which is determined through a full examination of the duties performed and the relevant agreements.

For purposes of an audit, it should be clear to the auditor, based on the information at the disposal of the auditor, that the person is a participant in a joint venture either as a result of an investment by the person in the joint venture or **by being designated as the operator of the joint venture responsible for managerial or operational control of the joint venture and the person has been designated as the joint venture operator for the joint venture.**

If there are concerns about whether a person qualifies as joint venture operator, a written request can be made to the CRA for assistance. Any correspondence should be addressed to the Excise and GST/HST Rulings and should contain all relevant information and be provided in the format as described in GST/HST Memorandum 1.4 *Excise and GST/HST Rulings and Interpretations Service.*

Question 4

There were a number of changes announced to the ETA in the 2016 Budget. Can you please comment on the following:

Part (a):

With regards to the changes to the nil consideration election under section 156; the amendments are to require that a corporation "hold and control" 90% or more of the votes of "every" corporate matter of the subsidiary. Is there any information available as to how this change will apply and how the terms "hold and control" as well as "every" will be interpreted and applied in this provision?

CRA Response

The rules for determining whether corporations are closely related for purposes of the *Excise Tax Act* (ETA), including the election under section 156, are set out in section 128 of the ETA. Under the existing provision, the closely related test generally requires that a particular corporation (or certain combination of corporations) owns not less than 90% of the value and number of the issued and outstanding shares of the capital stock of another corporation, having full voting rights under all circumstances. The rules for determining whether a Canadian partnership and a corporation or whether two Canadian partnerships are closely related for purposes of section 156 are set out in subsection 156(1.1) and include a similar test.

Proposed changes to section 128 and to subsection 156(1.1) introduce an additional requirement that the particular corporation or particular Canadian partnership must hold "qualifying voting control" in respect of a corporation.

Under proposed subsection 128(1.1), a person or group of persons holds "qualifying voting control" in respect of a corporation at any time if at that time

(a) the person, or the members of the group collectively, as the case may be, own shares of the corporation to which are attached not less than 90% of the shareholder votes that may be cast in respect of *each* matter, other than a matter

(i) for which a statute of a country, or of a state, province, or other political subdivision of a country, that applies to the corporation provides, in respect of the vote of the shareholders of the corporation on the matter, that

(A) any shareholder of the corporation has voting rights that are different from the voting rights that the shareholder would otherwise have under the letters patent, instrument of continuance or other constating instrument by which the corporation was incorporated or continued, including any amendment to, or restatement of, the constating instrument, or

(B) holders of a class or series of shares of the corporation are entitled to vote separately as a class or series, or

(ii) that is a prescribed matter or a matter that meets prescribed conditions or arises in prescribed circumstances (none are currently prescribed);

or

(b) the person or group, as the case may be, is a prescribed person or group in relation to the corporation (none are currently prescribed).

Pursuant to proposed subsection 128(4), for purposes of “qualifying voting control” a particular person is deemed not to own a share at a particular time if

(a) another person has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to control the voting rights attached to the share, unless the right is not exercisable at the particular time because its exercise is contingent on the death, bankruptcy or permanent disability of an individual;

and

(b) the other person is not closely related to the particular person at the particular time.

Generally, the changes described above apply as of the day that is one year after March 22, 2016. However they would also be effective on March 23, 2016, if an election under section 156 becomes effective within one year after March 22, 2016, unless the election is filed on or before March 22, 2016.

The CRA is currently developing a notice concerning the proposed changes to the closely related test.

Part (b):

Changes announced in the Budget will now restrict or eliminate the recovery of excise tax on diesel fuel that was used to generate heat or electricity.

Heating oil -Are the changes to the heating exemption designed to eliminate any "end user" refund claims on the diversion of diesel fuel for heating purposes other than for simply heating buildings?"

CRA Response

Yes. The excise tax exemption for fuel oil, purchased as heating oil and used for industrial purposes, will no longer apply, after June 30, 2016. Budget 2016 proposes to define heating oil as fuel oil that is consumed exclusively for providing heat to a home, building or similar structure. It removes the exemption and "end-user" refund claims for fuel oil consumed to provide heat in an industrial process.

Examples where fuel oil will no longer qualify for an excise tax exemption or refund, on or after July 1, 2016:

(i) diesel fuel for use in the refrigeration units (i.e., reefers) of trucks used to transport food;

(ii) diesel fuel used for heating aggregate rock in the manufacture of asphalt; and

(iii) diesel fuel used as part of an industrial process in the manufacture of explosives / shot rock.

Amendments to subparagraphs 68.01(1)(a)(i) and (ii) of the *Excise Tax Act* (*ETA*) stipulate refund eligibility for vendors and purchasers of diesel fuel, both during and after the transition period of March 23, 2016 to June 30, 2016. In order for a vendor to be eligible for refund, it must obtain a certificate of exemption from its purchaser. The use of such certificates has been a long-standing practice. A purchaser is eligible for refund, if the vendor has not applied for refund.

Generation of electricity – Secondly, the recovery of excise tax on diesel used to generate electricity has also been significantly restricted. Does this change now eliminate the recovery of any excise tax on diesel used for generating electricity in a multi-purpose capacity?

CRA Response

If at the time of purchase, the use of the diesel fuel is known to be solely for an excise tax-exempt purpose, it is to be purchased excise tax exempt. Multi-purpose fuel must be purchased on an excise tax-paid basis, with provision for refund for the exempt usage.

Paragraph 68.01(1)(b) of the *ETA* will authorize a refund "to a purchaser who applies for the payment and who uses the diesel fuel to generate electricity, unless the diesel fuel is used in or by a vehicle, including a conveyance attached to the vehicle, of any mode of transportation."

Refund applicants must be able to provide supporting documents showing the amount of diesel fuel used to generate the electricity.

Administrative material for both legislative amendments: ET/SL Notice 0077 is currently in draft format. External stakeholders, with questions about this notice (when published), may call the Canada Revenue Agency toll free at 1(866) 330-3304.

Question 5

We are seeing more situations where the CRA is assessing section 285 "gross negligence" penalties. Given the increasing complexity of the Excise Tax Act and other tax legislation, it is not uncommon for businesses to make honest errors and while we acknowledge the CRA's right to assess the tax and the general penalties and interest under sections 280 and 280.1, we are finding the application of section 285 penalties is not always reasonable. Can you please outline the process an auditor must take in assessing penalties under this provision? Can you also outline the current policy in applying the 285 penalties, especially with respect to several different kinds of mistake on the same return? Does the treatment differ for a willful mistake and say, a lost document to support an ITC?

CRA Response

Section 285 imposes a penalty on a person for knowingly, or under circumstances amounting to gross negligence, making a false statement or omission in a return or other document relating to a reporting period or transaction of the person.

When considering the application of gross negligence penalties, auditors are required to determine whether the registrant knew or ought to have known that the information provided for purposes of the *Excise Tax Act* was misstated. Each audit engagement must be considered on its own merits and auditors must review the unique circumstances in each audit and apply the penalties where warranted. Below are some examples of factors that may be considered by auditors in their determination of whether gross negligence must be applied:

- First occurrence vs multiple instances of similar errors;
- Voluntary disclosure vs adjustment detected via audit work;
- Adjustments made due to errors vs adjustments due to unreported/misreported transactions;
- Materiality of the false statement or omission;
- Whether the registrant was contacted by CRA in the past regarding the issue at hand;
- Expected level of registrant's knowledge of GST/HST matters;
- Degree of registrant's involvement in preparing the GST/HST return;
- Whether the registrant attempted to correctly apply the ETA and inadvertently misinterpreted it;
- Whether sufficient books and records were maintained; and

- Compliance history of the registrant.

Auditors who have identified adjustments during an audit that are subject to gross negligence penalties must prepare a gross negligence penalty report which is included in the registrant's audit file. This report requires auditors to document their rationale for the application of the penalties. The report must be reviewed and approved by the auditor's team leader and subsequently by the manager of the audit section or another independent CRA authority. These reviews are designed to ensure that auditors' gross negligence penalty proposals are determined objectively and are well supported and justified by the facts of each situation.

Registrants are advised of potential gross negligence penalties during the proposal phase of the audit. They are then offered an opportunity to provide additional information or representations regarding the proposed penalties. Registrants who are assessed penalties and who disagree with this assessment may file a Notice of Objection which will lead to an independent review of these penalties by the Appeals Branch in CRA.

With respect to the calculation of the gross negligence penalty, where the false statement or omission is relevant to the determination of the person's net tax for a reporting period, the penalty is the greater of $250 and 25% of the total of the amount determined by the formula under paragraph 285(a) of the Excise Tax Act, which reads as follows:

A – B

where

A is the person's net tax for the period, and

B is the amount that would be the person's net tax for the period if the net tax were determined on the basis of the information provided in the return.

The phrase "the person's net tax for the period" in element A of the calculation refers to the person's actual correct net tax for the particular reporting period which would effectively be the net tax as determined by the audit. As a result, element A would be determined after taking into account all adjustments to net tax for the period. These adjustments would include increases to net tax that are assessed due to gross negligence, increases assessed that are not due to gross negligence, as well as any decreases to net tax such as allowances for unclaimed ITCs or unclaimed deductions to net tax.

The determination in element B of the person's net tax for the period if the net tax were determined on the basis of the information provided in the return simply refers to the net tax that the person originally filed on the return for the reporting period before any adjustments to net tax have been made.

In summary, where gross negligence applies to any adjustment(s) to net tax for a reporting period, the penalty under section 285 will be calculated using the total of all adjustments (positive and negative) to net tax for the period, including those adjustments that have been made due to reasons other than gross negligence. In cases where no adjustments are made due to gross negligence in a particular reporting period, then gross negligence penalties will not apply to any other adjustments made in that particular period.

Question 6

We are having trouble getting back dated registrations for businesses required to be registered, or who charged GST or HST on previous supplies. We have no line of communication with the particular CRA office that is handling a particular request.

How is back dating of registrations now being assigned and can you please provide a process to follow when the request is denied? (We had a recent request denied because the supplies were zero rated and therefore "no tax was collectible".)

CRA Response

If a taxpayer who is registering voluntarily requests that a registration be backdated beyond a 30-day period, documentation must be presented to support the date requested. The taxpayer must provide evidence that GST/HST had been charged from the date requested on a regular and consistent basis. Documentation such as copies of the sales journal, sales or service contracts or the earliest 3 to 5 invoices are generally sufficient for this purpose.

Business Enquiries (BE) telephone agents will advise taxpayers to send the required documentation to the applicable Regional Correspondence Centre (RCC). Once the request is received, RCC agents will scan the request into a searchable database that the BE telephone agents have access to. Should the taxpayer want to call and get an update on the status of the request, the BE telephone agents will be able to provide that information.

Requests are usually denied if there is insufficient proof. Taxpayers can resubmit the request and the appropriate proof to backdate the registration.

Question 7

The CRA has removed all trace of telephone numbers on their websites and Business Window Officers are not allowed to give these out. Why can't we, as tax professionals striving to help registrants with compliance, have telephone numbers that we can contact for Tax Services Offices across the country?

CRA Response

The CRA and CPA Canada have been working together closely to try and improve services for service providers.

- In October 2015, the CRA released enhanced telephone tips for service providers.
- As per the 2016 budget, the government proposed to pilot a new dedicated telephone support line for tax service providers, giving them greater access to CRA information. The pilot is set to commence in 2017.
- Every year there is ongoing improvements to E-services allowing taxpayers and tax preparers to do more online.

Question 8

a) We understand that the Refund Integrity (“RIP”) Group now is employing “screeners” and "reviewers" prior to a file being assigned to an auditor. Can you clarify the current process for auditing of refund claims?

b) The RIP audits in the Prairie region are managed out of the Saskatchewan Regional Office however most RIP audits of Alberta registrants appear to be assigned to RIP auditors in Eastern Canada. Is there an explanation for this?

c) There are many issues arising for the RIP group that cause us concerns. We have seen a RIP auditor and their Team Leader process a contentious assessment without issuing a written proposal and without even explaining in writing why the ITCs were denied? Can you please provide us with a process to follow to deal with RIP problems, including telephone numbers that are relevant and not just the general Business Window number?

CRA Response

Part (a)

All GST/HST refund requests are systematically reviewed to identify errors or evidence of non-compliance. If a refund request is identified by the system as having potential errors, it is reviewed by a screener who further risks assesses the return. The screener may call the registrant for further information at this time. After risk assessing the return, the screener decides to either finalize the return (i.e approve the return for payment) or refer it to an examiner for a more in depth review. The examiner will contact the registrant and ask for information to substantiate the refund claim. The nature of this work that is completed within the refund integrity program is considered to be limited in scope therefore we have examiners and not auditors in our program. We don’t have any employees that are considered to be “reviewers”.

Part (b)

Given that we have a national workload model, claimants may be contacted by an examiner located anywhere in Canada. This model was implemented in April 2012.

Part (c)

> RIP examiners are not required to propose when only disallowing ITCs. Proposal of examination results is only mandatory if GST/HST is assessed, a self-assessment is raised or when reassessing a prior period. However, RIP examiners are required to send a final letter to all registrants explaining their adjustments. Also included in this letter is both the examiner's and their team leader's phone numbers. Registrants should call these phone numbers if they have any issues.

Question 9

The CRA Appeals Directorate is running behind 18 months if recent assignments are any indication. What is CRA audit doing to reduce the number of unnecessary objections that prove to be total reversals of the audit assessment?

CRA Response

The GST/HST Directorate in Domestic Compliance Programs Branch has a number of initiatives that should contribute in reducing the number of unnecessary objections of audit assessments.

The Audit Quality Review Program helps to ensure the integrity of the CRA's small and medium income tax and GST/HST compliance programs. By randomly selecting files for review, the program ensures that audits and examinations are conducted in accordance with audit policies and procedures, and that proposed reassessments conform to the legislation.

A suite of industry sector profiles continues to be developed to provide auditors and examiners with information on the factors that are unique to particular industries, such as business practices, books and records, GST/HST audit risks and issues and the audit techniques to address them. This information will allow auditors to conduct more effective and efficient audits and examinations, increase technical capacity, enhance development of sector or issue specific knowledge and improve knowledge transfer and business intelligence.

Additionally, a mandatory referral process is in place in which proposed GST/HST assessments exceeding $5 million must be referred to HQ prior to the issuance of the proposal letter to the registrant. These files are reviewed by the impacted HQ program area to ensure the correct technical application of the *Excise Tax Act* (ETA) and CRA's administrative policies.

Question 10

The amendment to section 241 of the ETA now allows the Minister to register a person without the person requesting registration in subsection 241(1.5). It does however, restrict the ability of the Minister to back date registration only 60 days. Why are we seeing registrations created unilaterally by the Minister that fall outside subsection 241(1.5) in that they are earlier than 60 days before the date the notice of intent is mailed out?

CRA Response

Registration should be followed in accordance to this legislation. Taxpayers can send in correspondence and ask for the account to be reviewed if the registration has fallen outside the limitations of the legislation.

Question 11

It has been many years since we have identified the CRA failing to apply section 296 in assessing where it is clear there are credit amounts required to be included in the assessment. We are still seeing auditors and appeals officers failing to apply credits as the law requires. This is not a matter of policy: the law is clear and CRA staff are assessing outside the law.

What has been done to ensure compliance with 296 across Canada, especially with respect to the assessment of rebate amounts identified by subsections 296(2.1) and 296(3.1)?

We understand that the CRA has developed a way to deal with credit amounts that are not refundable per subsections 296(4) or 296(4.1). How does this work? (The CRA used to deny the credits even though the legislation and the courts have dictated that they are allowable, just not refundable.)

CRA Response

When a GST/HST return for a particular reporting period is selected for audit or examination, the auditor or examiner is assessing whether or not the net tax reported by the registrant for the particular period under audit or examination is correct or if a change to the net tax is required based upon all available information and documentation. Since the auditor or examiner is assessing net tax, pursuant to subsection 296(2) and 296(2.1), they must take into account any unclaimed input tax credits (ITCs), unclaimed allowable deductions or unclaimed allowable GST/HST rebates for the particular reporting period in the course of determining the registrant's net tax. Please note that the CRA considers the "particular reporting period" to be the reporting period in which the ITC or deduction first became claimable. With respect to allowing these unclaimed amounts (rebates included), it is important to remember that the auditor or examiner must be able to determine their validity and may therefore request further documentation, including in the case of GST/HST rebates, copies of the actual rebate forms. If the auditor or examiner cannot validate the unclaimed amounts, they will not allow the adjustments.

Over the past couple of years, HQ has reminded auditors and examiners of the above requirement when assessing net tax and has also updated the *GST/HST Audit and Examination Manual* with clear instructions on the matter. Procedures have been developed for the allowance of valid unclaimed rebates and have been shared with auditors and examiners. HQ has also provided training in the form of national and regional webinars on the assessing provisions of section 296 specifically to improve our auditors and examiners knowledge in this area.

With respect to credit amounts that are not refundable, provided the credit amounts are valid and allowable pursuant to sections 296 and 298, auditors and examiners are expected to allow the full credit amounts in the applicable reporting period. The GST/HST mainframe system will then handle the application of subsections 296(3), (3.1), (4) and (4.1). In the end, the amounts may not be refunded but they will be applied against any outstanding debts that exist on the date of the Notice of Assessment as per subsections 296(3) and (3.1). Please note that because GST/HST rebates are required to be assessed under section 297, even when the rebate amount is allowed under subsection 296(2.1), the registrant will receive two Notices of Assessments, one for the changes to net tax and one for the GST/HST rebate.

Question 12: Pension Master Trusts

An employer sponsors multiple registered pension plans for its employees. The pension trusts hold units in the master trust. The master trust agreement provides for the collective investment and reinvestment of the assets of the participating (pension trusts).

Investment management fees are usually charged as a single amount. The master trust will allocate the fees between pension trusts on a proportionate basis. The master trust agreement does not contain any stipulation that investment management fees are payable the individual participating pension trusts.

The master trust does not appear to be a “pension entity” for GST/HST purposes and cannot claim the rebate available to pension entities. We understand the Department of Finance is aware of this issue and there is a possibility of amendment.

Question:

Has the Department of Finance communicated to the CRA any timeline on the possibility of amendment?

Is the CRA planning to publish any administrative policy regarding the interaction of master trusts with the registered pension plans, and the deemed employer expense amounts in section 172.1?

CRA Response

The Department of Finance has not communicated any specific timeline to the CRA regarding their review of master trust matters.

The CRA has issued rulings and interpretations on the application of the *Excise Tax Act* to matters concerning master trusts and would generally endeavor to publish a bulletin or notice or other type of publication on any proposed amendments issued by the Department of Finance.

Question 13: Listed Financial Institution

A corporation holds shares and has issued shareholder loans to its subsidiary corporations. Over 80% of its assets are advances to the subsidiary corporations. The holding company is registered for GST/HST and income over the past income tax year was in excess of $1,000,000, including management fees charged to the subsidiaries.

a) Would the holding company's primary business meet the conditions to be considered a listed financial institution under subparagraph 149(1)(a)(viii) as a person whose principal business is the lending of money or the purchasing of debt securities or a combination thereof; or, subparagraph 149(1)(a)(iii) as a person whose principal business is as a trader or dealer in, or as a broker or salesperson of, financial instruments or money?

b) Where the answer to question (a) is that the holding company is a financial institution, will it be required to file Form GST111, pursuant to section 273.2?

c) Where the shareholder loans are non-interest bearing (i.e., all or substantially all of the income earned by the corporation is management fees charged to the subsidiaries), would the company be required to file Form GST111?

d) Where we discover a number of situations similar to this with no history of filing Form GST111, is the *Voluntary Disclosure Program* the best means of back filing the information schedule to avoid penalties that apply thereon? We anticipate a backlog of such disclosures should these organizations be enforced to file the information schedule.

CRA Response

There is not enough information to provide a definitive answer to the questions asked. However, we can provide the following information for your consideration.

All legislative references are to the *Excise Tax Act* unless otherwise specified.

Part (a)

A person is a listed financial institution throughout a particular taxation year if, at any time in the particular year, the person is described in any of subparagraphs 149(a)(i) to (xi). For example:

- a person whose principal business is as a trader or dealer in, or as a broker or salesperson of, financial instruments or money is referred to in subparagraph 149(1)(a)(iii); and

- a person whose principal business is the lending of money or the purchasing of debt securities or a combination thereof is referred to in subparagraph 149(1)(a)(viii).

To determine what the principal business of a person is for the purposes of section 149, a review of the facts and circumstances of each case is required.

GST/HST Memorandum 17.6, *Definition of "Listed Financial Institution"* provides guidance on determining a person's principal business in paragraphs 9 through 12. Some factors to be considered include:

- the relative profits realized by each segment of a person's business;
- the total number of supplies made and the total value of the revenue received from supplies made in each business activity;
- the relative value of the assets employed in each business activity;
- the commercial practices of the person, including the time, attention, and efforts expended by the employees, managers, or corporate officers in each business activity; and
- the corporate objects in the case of a corporation.

In summary, it is a question of fact whether the corporation described in this question is a listed financial institution under subparagraph 149(1)(a)(iii) or subparagraph 149(1)(a)(viii) and insufficient information has been provided to make this determination.

Part (b) and (c)

Under subsection 273.2(3), "reporting institution" is required to complete and file a GST/HST annual information return, Form GST111, *Financial Institution GST/HST Annual Information Return* within six months after the end of its fiscal year. Under subsection 273.2(2), a person, other than a prescribed person or a person of a prescribed class, is a reporting institution throughout a fiscal year of the person if:

- the person is a financial institution at any time in the fiscal year;
- the person is a registrant at any time in the fiscal year; and
- the total of all amounts each of which is an amount included in computing, for the purposes of the *Income Tax Act*, the person's income, or, if the person is an individual, the person's income from a business, for the last taxation year of the person that ends in the fiscal year, exceeds the amount determined by the formula

$$\$1,000,000 \times A/365$$

(where A is the number of days in the taxation year).

Under the *Financial Services and Financial Institutions (GST/HST) Regulations*, a selected listed financial institution that is:

- a segregated fund of an insurer referred to in subparagraph 149(1)(a)(vi), or

- an investment plan referred to in subparagraph 149(1)(a)(ix), other than a trust governed by a registered retirement savings plan (RRSP), a registered retirement income fund (RRIF), or a registered education savings plan (RESP),

is not required to file Form GST111 because it is a prescribed person for purposes of subsection 273.2(2) and therefore not a reporting person.

It is important to note that a “financial institution” is defined in subsection 123(1) to mean a person who is a financial institution under section 149. Subsection 149(1) identifies two categories of financial institutions for GST/HST purposes:

- listed financial institutions as described in paragraph 149(1)(a); and
- persons who are determined to be financial institutions based on the *de minimis* threshold tests set out in paragraphs 149(1)(b) and (c).

As you may be aware, on March 22, 2016, as part of the Budget, the Minister of Finance announced proposed amendments to section 149 which would impact whether certain persons are considered to be de minimis financial institutions under paragraph 149(1)(c).

Based on these proposed amendments, it is proposed that a person would exclude certain types of interest in determining whether the person exceeds the $1 million threshold in paragraph 149(1)(c) and is considered to be a de minimis financial institution. As a result, generally, a person would exclude interest from certain deposits of moneys held by certain entities, such as a bank or a credit union, in the usual course of the bank or credit union’s deposit-taking activity and where the bank or credit union is required to repay the money in 364 days or less. For purposes of determining whether a person is a de minimis financial institution under paragraph 149(1)(c), it is proposed that the amendments to section 149 would apply **throughout he taxation years** of a person that **begin after March 21, 2016**.

It is important to note that only for purposes of determining whether the person is a reporting institution under subsection 273.2(2) and required to file the annual information return for financial institutions, it is proposed that the amendments to section 149 would apply **throughout the fiscal year** of a person that **begins before March 22, 2016, and ends on or after that date**.

In summary, it is a question of fact whether the corporation described in this question is a reporting institution and required to file Form GST111; insufficient information has been provided to make this determination. However, based on the limited information provided, it appears that the proposed amendments to section 149 will not impact the determination of whether or not the corporation is a financial institution.

Part (d)

The requirement to file Form GST111 for financial institutions that are reporting institutions applies to fiscal years beginning after 2007. Penalties under subsection 284.1(1) and (2), specific to an annual information return required to be filed after June 29, 2010, were introduced to promote compliance and can apply if a reporting institution fails to report an amount as and when required, or misstates such an amount on Form GST111 or fails to provide a reasonable estimate, where estimates can be provided on Form GST111. This would include a situation where a reporting institution files its information return late, but accurately. It is important to note that a penalty under subsection 284.1(1) or (2) will only apply where the reporting institution did not exercise due diligence.

GST/HST Guide RC4419, *Financial Institution GST/HST Annual Information Return* related to Form GST111 provides more information on these specific penalties. This guide is also available on the CRA website.

Subsection 284.1(3) provides the Minister of National Revenue with the authority to waive or cancel penalties payable under this section. This authority is delegated to certain positions in the CRA and is exercised on a case by case basis. Generally, penalties would be cancelled or waived where they have resulted from an extraordinary circumstance beyond a person's control, which prevented the person from complying with the reporting requirements in section 273.2. The fact that a particular financial institution is unaware of its obligations to file an information return would not generally be sufficient justification for the Minister to waive or cancel penalties payable under section 284.1.
However, under the *Voluntary Disclosures Program*, GST/HST registrants can make disclosures to disclose information they have not provided during previous dealings with the CRA, and may avoid penalty or prosecution if they make a valid disclosure. The CRA's Information Circular IC00-1R4, *Voluntary Disclosures Program*, provides additional information on making a voluntary disclosure and is also available on the CRA website.

Question 14: GST – Holding Companies

Has the CRA reviewed and updated its position on section 186 following the *Miedzi Copper* case and in light of the *Stantec* decision?

CRA Response

Our position on the interpretation of section 186 has not changed. It is a question of fact whether subsection 186(1) would apply in a particular situation. We will apply the Court's decision in *Miedzi Copper* where the situation has the same facts as that case. Similarly, we will apply the Court's decision in *Stantec* where the situation has the same facts as that case. If you have a question about the application of subsection 186(1) to a particular situation, please provide the relevant facts and documents and we will review the request.

Question 15: ITC Allocation

Has the CRA reviewed and updated its position on the use of weighting as a result *of University of Calgary v. R* decision? Justice D'Arcy ruled that UC's method was fair and reasonable even though the UC's method gave equal weight to: building space (with all of its infrastructure); and a parking lot space.

CRA Response

Although the CRA did not appeal the *University of Calgary* case, in subsequent cases with similar types of entities we will be taking a close look at the specific fact situations and how the legislation applies keeping in mind that, an ITC allocation method must reasonably reflect the actual use of the inputs and the manner in which the person conducts its business generally. For example, a university whose predominant purpose is education and research would generally not acquire its main campus over 40% for the purpose of making taxable supplies for consideration.