November 2018

2017 CPA Alberta Canada Revenue Agency (CRA) Tax Roundtable

The annual Canada Revenue Agency (CRA) Roundtable Meeting was held in 2017. 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 2017 Roundtable, contact Director of Member Engagement and Technical Advisory 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

Q1. CRA Reviews – Standard of Evidence / Review Process (Plenary)

It seems more and more common that individuals face the same deductions and expenses being questioned annually. Often, claims disallowed in prior years and reinstated on Objection are reviewed, and the results of the prior Objection not considered relevant at the assessing level. It seems unfair that some taxpayers must incur ongoing costs of not only supporting the same claims on an annual basis, but of having claims previously determined to be appropriate forced to pass through the Objection process repeatedly.

a) The May 4, 2016 decision of Hershfield, J. of the Tax Court of Canada in the Ruben Mendoza case (2016 TCC 12; 2015-4051(IT)I) (see paragraph 7 of the decision) seems critical of CRA's standard of evidence as applied, in that case, to the credit for public transit passes. In light of Mendoza, we are interested in whether the CRA has reviewed these comments, and considered their processes and procedures in light of same. More broadly, can the CRA comment on any steps they are taking to reduce the costs of compliance for taxpayers in this regard?

b) Our members have had recent experiences where the objection process at CRA was difficult to ultimately get to the right answer. Can the CRA comment on the following:

(i) What are the standards required for CRA agents documenting the basis for their decisions, and communicating same to taxpayers and their representatives, at:

a. the Pre- and Post-Assessing Review and Appeals level?
b. the new "limited review of corporate tax returns" level?
c. the audit level?
d. the Objections/Appeals level?

(ii) What is the requirement for review at each of these levels before a return is assessed or reassessed, or an assessment confirmed or varied?

(iii) Please confirm CRA's policy regarding the facilitation of discussions with a Team Leader. Does the policy vary between the levels set out above?

(iv) What, if any, steps has CRA taken to communicate the policy to facilitate Team Leader involvement to taxpayers under review, and their representatives and advisors? Would CRA consider further, formal communication of these policies?

c) The Fall 2016 Report of the Auditor General of Canada noted that CRA's inventory of outstanding income tax objections had increased by 171% in the past 10 fiscal years,

it took months or years to resolve tax objections and almost 2/3 of objections were allowed in full or in part.

The Auditor General recommended that auditors be given feedback when their assessing positions are overturned by the CRA's appeals branch or the Courts and the CRA agreed that such feedback would be implemented in the 2016/17 fiscal year.

Could the CRA please comment on the specific steps that it has implemented? For example, is there a change to the *Audit Manual* or some other authority?

Canada Revenue Agency (CRA) Response

Since the Canadian tax system functions on the basis of self-assessment, the CRA is obliged to review a number of returns each year to ensure that taxpayers are entitled to the claims that they have made, and that amounts claimed have been correctly calculated. The principle of "self-assessment" is the cornerstone of the Canadian income tax system and depends in large part on the awareness of taxpayers that a review by the CRA is always possible, even if claims seem reasonable or are consistent with earlier claims that they have made. The CRA tries to conduct their review activities fairly and to find and maintain a balance between the need to review returns and the possibility of causing an undue burden on taxpayers.

As part of their review activities, the CRA may request documents to support claims made by taxpayers. The documents requested are based on the applicable provisions of the *Income Tax Act* (ITA) and Income Tax Regulations (ITR) and are to ensure that the conditions outlined in those provisions have been met. Assessors in the CRA's review programs are instructed to base their decisions on the facts and documentation provided during the review process. Decisions rendered under the objections process may not be treated as precedents for future reviews or for other cases.

The above notwithstanding, the CRA does have a process in place that takes into consideration Appeals' decisions to identify opportunities for improvements in processes. We would like to note that the majority of overturned assessments result from appellants providing information that was requested during the review process but was not provided, or additional information being provided at the objection stage. This underscores the importance of providing complete and accurate information at the earliest stage possible in the review process.

Part a) Response: ***(Mendoza case and reduction of costs of compliance)***

The CRA may, in the course of administering the *Income Tax Act* (ITA), request documents to support claims made by taxpayers. Section 220 of the ITA provides the legislative authority that allows the CRA to request these supporting documents in the course of its review activities. The CRA does not have the authority to act outside the boundaries of the laws that they administer and structures their processes to reflect the requirements of those laws.

The CRA regularly reviews their processes in an attempt to find ways to improve their effectiveness and efficiency. During that process, consideration may be given to the outcome of informal court decisions even though, they are not required to do so as informal court decisions are not precedent setting.

In respect of the Mendoza case, the CRA has reviewed the comments and decision of Justice Hershfield and after some consideration have decided that they will not be making any changes to their existing requirements for supporting documents related to the public transit amount. The CRA worked closely with various transit authorities to ensure that they were able to provide to their clients the information needed to support this claim as well as to ensure that as much information on the process as possible was made available to taxpayers on their websites. This is especially true of the Prestocard organization who as a result of this collaboration, provides comprehensive information on their website at https://www.prestocard.ca/en/about/tax-credit. Information is also available on the Toronto Transit Commission's website at https://www.ttc.ca/Fares_and_passes/PRESTO/FAQ.jsp and the CRA website at http://www.cra-arc.gc.ca/transitpass/.

The CRA makes every attempt, through various mediums, to communicate information on credits and deductions as well as other amounts that are reported on the T1 General income tax and benefit return. While basic information on the various lines can be found in the T1 Guide, the CRA provides more detailed information through a variety of mediums such as claim specific guides, Income Tax Folios, line specific information on their website, fact sheets, tweets, short videos, and audio clips.

Part b) Response: **(*Objection process)***

(i): ***(Standards required for documenting the basis for decisions at):***

a. ***(Pre- and post-assessing review and appeals level)***

CRA assessors in the pre- and post-assessing review programs are instructed to put notes on a taxpayer's file that would be beneficial to a future review. They are also instructed to ensure that final letters, where an amount is being reduced or denied in full, are as detailed as possible

to ensure that the taxpayer understands clearly the reason that their claim was reduced or denied in full.

The CRA's objective is that all correspondence be clear, concise, and easily understood by the recipient. This is especially important for final letters. As a result, the language of these letters are reviewed and revised on an ongoing basis to provide taxpayers with as clear an understanding as possible of what actions were taken on their file and why.

b. ***(the new "limited review of corporate tax returns" level)***

The CRA could not provide a response at this time.

c. ***(the audit level)***

The Income Tax Audit Manual states "it is essential that the taxpayer receive a full explanation of the proposed adjustments and is given an adequate opportunity to respond". The Income Tax Audit Manual also outlines the documentation requirements for audits. The manual states that there are minimum documentation requirements for all small and medium business audits. Audit files must have working papers that document the audit from beginning to end. Some working papers of particular importance are:

- the Audit Plan, which may be adjusted for issues encountered during the audit;
- Form 2020, Memo for file, which is used to document all conversations relating to the audit
- The research of technical issues and reassessments; and
- The Audit Report, which summarizes the findings of the audit.

d. ***(the Objections/Appeals level)***

With respect to objections, Appeals Officers are required to issue decision letters that meet the standards set out in the Appeals Manual. Those standards focus on ensuring that the decision on the objection is clearly explained through a brief summary of the objector's reasons for each issue under objection (to confirm understanding) and summarizing the rationale for the Appeals decision. The Appeals decision is supported by a summary of the main facts on which the decision was based and linked to the legislative reference under which the decision was made. This objective is to provide the objector with sufficient information and details to allow for an informed decision on whether to accept the decision or appeal to the Tax Court of Canada.

(ii) ***(requirement for review at each level)***

Pre-and Post assessment level

With respect to the pre- and post-assessment review level, the CRA is unable to provide specific details on the criteria used for selecting returns for review as it would compromise the integrity of their review programs. However, they are able to confirm that while a small number of returns are chosen at random, the majority is selected based on a sophisticated scoring system. This system is designed to incorporate multiple factors to identify those returns that carry the highest potential for inaccuracy. Returns are selected on an individual basis with consideration given to previous review results in order to avoid repeated reviews of those taxpayers who have proven to be compliant. It is, however, possible for a taxpayer to be reviewed in more than one year, depending on their compliance history and the types of claims that are present on their return for each year. Please note that if a claim is denied in full or in part, this will have an impact on a taxpayer's compliance history. For more information on the CRA's review programs, go to http://www.cra-arc.gc.ca/reviews/.

Before a final determination is made in the review of a claim, the CRA will verify all information available to them in their systems and if needed, will request supporting documents from the taxpayer or their representative. Their decisions are based on the facts of the particular case.

Team Leader level

The team leader is directly involved at each stage of the audit and must provide approval at regular intervals. Team leader approvals throughout the audit are documented in the audit file.

(iii) ***(policy regarding the facilitation of discussions with a Team Leader)***

Pre-and Post assessment level

With respect to the pre- and post-assessment review programs, program assessors, in most cases, are in the best position to respond to technical concerns of taxpayers or their representatives. They also have resource officers available to assist them on more complex issues. However, a taxpayer or their representative can request to speak with the assessor's supervisor. Depending on the availability of the supervisor, this may result in a callback to the taxpayer or their representative. The callback must be executed by the end of the next business day based on the caller's time zone.

Team Leader level

Furthermore, audit policy requires that letters sent to the taxpayer have the name and telephone number for the team leader, to make it easier to contact him or her. The team leader will often go to the initial and final meeting

between the taxpayer and the auditor. In addition, the taxpayer can ask for the team leader to attend meetings with the auditor.

(iv) *(steps taken to communicate the policy)*
The CRA has a formal escalation process that is detailed in guide RC17, *Taxpayer Bill of Rights Guide: Understanding Your Rights as a Taxpayer*, and in guide RC4540, *Complaints and Disputes*. These guides both contain the following statement:

> "If you still disagree with the way your concerns were addressed, you can ask to discuss the matter with the employee's supervisor."

The right of a taxpayer or their representative to escalate to a supervisor is also mentioned on the CRA website at https://www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/complaints-disputes/make-a-service-complaint.html.

The CRA is not considering additional forms of formal communications of this policy at this time.

Part c) Response: (*Auditor General recommendation on feedback to auditors)*

A protocol was initiated at the end of 2015 between the Audit and Appeals branches. A relevant part of the protocol was to bring a case back to audit if the taxpayer had submitted information to Appeals that had been requested by Audit and not provided by the taxpayer.

Additional emphasis, through Audit Quality Review standards, was placed on ensuring auditors used appropriate legislative enforcement provisions to obtain all necessary information during the audit process.

Q2. Continuing Professional Education for Canadian Income Tax Preparers (Plenary)

The IRS broadcasts webinars on a variety of subjects aimed at educating tax professionals on issues affecting their clients. These webinars are free and often offer continuing education credit for Enrolled Agents.

CRA has participated in webinars hosted by CPA Canada, which discuss administrative matters (for example, the T1 Eservices webinar presented in March, 2017), and has also provided an array of podcasts and videos directed at taxpayers directly.

a) Does the CRA have any plans to independently offer Continuing Professional Development courses to Canadian Income Tax preparers on more technical matters to assist them in updating their knowledge and skills?

(b) Does CRA plan on continuing its involvement with CPA Canada hosted webinars?

(c) What topics might we expect to see covered by CRA?

Canada Revenue Agency (CRA) Response

Part a)

In the Assessment, Benefit, and Service Branch (ABSB), we are not aware of any such plans.

Part b)

Yes. We are currently working with CPAC on developing a CPAC Hosted webinar slotted for November 7th English and 9th French.

Part c)

The CRA presentation is to include discussions on My Business Account, Represent a Client; and possibly CRA Biz App depending on available time.

Q3. Refunds Paid by Cheque (Plenary)

In the last few years commentary was released about an expected end to the provision of government payments, including those made under the income tax system, by cheque. This was discussed at the 2015 version of this conference, with reference to the government FAQ at http://www.tpsgc-pwgsc.gc.ca/recgen/txt/faq-eng.html Are there ongoing plans to eliminate this option, and if so, what is the timeline?

Canada Revenue Agency (CRA) Response

The Government of Canada is transitioning towards direct deposit for all its payments. Direct deposit is fast, convenient, reliable, and secure. Canadians are being strongly encouraged to enroll in direct deposit for all their federal government payments. Enrolment remains voluntary and those Canadians not enrolled can continue to receive their Government of Canada payments by cheque.

Q4. Registration of Tax Preparers Program (RTPP) (Plenary)

We have heard no updates regarding whether this program will proceed since the 2015 Federal election. The CRA webpage on this proposal (http://www.cra-arc.gc.ca/gncy/cmplnc/rtpp-pipdr/cnslttnppr-eng.html was last updated in November 2015, and is presently indicated to be archived.

Can the CRA provide an update on whether this program is expected to proceed and, if so, any timeline and/or details on how it will operate?

Canada Revenue Agency (CRA) Response

The Registration of Tax Preparers Program (RTPP) was originally announced as part of the Canada Revenue Agency's (CRA) three-point plan to improve voluntary compliance for small and medium-sized businesses. The RTPP was designed as a registration system for tax preparers who prepare individual or corporate income tax returns for a fee. The overall objective of the program was to work closely with the tax preparer community to prevent frequent and re-occurring mistakes in the filing of income tax returns. The CRA launched a public consultation process on the RTPP in January 2014 to gain a better understanding of the business needs of tax preparers, the impact of the registration process and to solicit input from all stakeholders.

The tax preparer community provided valuable input into the proposed program. In general, tax preparers expressed a desire to continue working closely with the CRA and the overall results of the consultations was that the RTPP should be designed to minimize additional red tape; to emphasize a collaborative and preventative approach to addressing non-compliance; and to enhance services that would serve to reduce non-compliance. For a detailed analysis of the public consultations on the RTPP, please see the CRA website at What We Heard - A report on the public consultation for the proposed Registration of Tax Preparers Program.

Taking into consideration the input of stakeholders, the CRA further pursued its analysis of the legislative and system requirements needed to implement the RTPP. This analysis has shown that to be effective the program as originally proposed would require significant investments that no longer align with CRA priorities. However, the goals of the RTPP continue to be very relevant to an effective tax administration: the value and importance of working closely with stakeholders to prevent common errors and improve long-term compliance.

The CRA is now considering other options that would serve to implement the objectives of the proposed RTPP through existing CRA programs and initiatives at lower costs. With a collaborative, educational approach, that includes leveraging programs like the Liaison Officer Initiative, the upcoming pilot of the Dedicated Telephone Service for Income Tax Service Providers, and utilizing its current partnerships with various associations and other stakeholders as well as a continued commitment to an expanded suite of electronic services, the CRA believes it can achieve the objectives of the RTPP in a more cost-effective manner.

Q5. CRA's On-Line T1 Change Request Process (Plenary)

The on-line system used to request changes to a taxpayer's T1 return is often used by tax professionals because the taxpayer is either not set up to use CRA's on-line portal, or the

matter is complex and the taxpayer prefers the professional to manage the entire process. Currently, after submitting an on-line request for T1 return change, this goes to the Change "My" Return system and the CRA responds by sending a letter to the client requesting more information. This creates unnecessary delay and in certain cases, denial of the changes if the client does not respond, or ignores the correspondence.

A possible solution could be to allow additional information to be submitted using the online system, or the ability to specifically identify the party that is preparing and submitting the request so that follow-up correspondence from the CRA is properly sent to the tax professional rather than the taxpayer.

a) Does the CRA system identify the party that is submitting a request to change a taxpayer's T1 return? If no such identification exists, will the CRA consider providing this input in the future?
b) Alternatively, will the CRA permit upload of PDF information in support of a T1 change request in those situations where further information will certainly be required?

Canada Revenue Agency (CRA) Response

Part a)

In cases where a tax professional requests a change to a taxpayer's T1 return using the online Change My Return service, the CRA is able to identify whether the request was submitted by the taxpayer themselves or their representative. When follow-up correspondence is required, CRA procedures instruct that correspondences will be addressed to the representative when there is level 2 authorization on the account. Where there is no level 2 authorization, correspondence will be issued directly to the taxpayer.

Part b)

The CRA is continuously striving to improve the e-services that we offer taxpayers or their authorized representatives. CRA is working on adding an option within Change My Return that will enable taxpayers and their representatives to electronically submit documentation in support of a T1 change request or upon receiving a request for additional information or supporting documents from CRA. There is currently the option to submit documents electronically through MyAccount, however this service does not directly link the document to the adjustment request.

In addition, the CRA has recently introduced ReFILE for the 2016 tax filing season. ReFILE is a new service which allows EFILE service providers to make adjustments to their clients' T1 returns using their preferred EFILE certified software. This service will be expanded to allow individuals who Netfile to submit adjustment requests through their software for the next filing season.

Q6. Electronic Signatures (Plenary)

While the CRA has been making great strides in its digital services area, allowing a number of forms to be completed and submitted on-line with a “tick-the-box” certification, and with NO SIGNATURE required to accompany the form (e.g. GST return), there appears to be a reluctance to allow electronic signatures on forms generally, other than a several non-resident forms (NR301, NR203, NR303). The CRA website states that if a fillable PDF form requires a signature, “the completed form must be printed and signed by hand”.

We assume that the CRA accepting electronic signatures on certain non-resident forms is an acknowledgement that the non-residents are outside Canada, and therefore this policy will facilitate completion of the forms by the non-resident. However, it is not uncommon that Canadian taxpayers are out of the country at the time that a signature is required on tax documents being prepared in Canada by their tax professional and they may not readily be able to return the signed document.

As you are aware, currently, there are two methods that allow for documents to be signed electronically:

1. a signature is placed on a PDF document, either by the person adding a picture of their actual signature to the document, or by drawing their signature on the PDF document using a mouse or other digital tool; and
2. a signature is either “drawn” or “written” onto a PDF document using one of various commercial products (e.g. Adobe Sign, Citrix RightSignature, DocuSign, etc. etc.) which typically provide an signature “certificate” containing time tracking and other metadata relative to the person who applied their signature to the document.

This problem is particularly relevant with respect to T183, T1013 and RC59 forms, which are often time-sensitive and which generally must be retained on file by the taxpayer’s representative, to prove that they have the requisite authority to file tax returns or access client data held by the CRA.

Does the CRA have any timelines of when it will permit the use of electronic signatures for CRA forms?

Canada Revenue Agency (CRA) Response

The CRA is committed to developing strategies to enhance its digital services, while ensuring we safeguard confidential personal information. The CRA recognizes the growing interest to be able to accept digitally-signed documents, and is currently in the process of exploring the possibility of accepting digital and/or electronic signatures. However, in the absence of an electronic signature policy at this time, taxpayers can also grant their representative immediate authorization through the My Account or the My Business Account secure portal without an ink signature (Form T1013 and RC59). After logging into My Account or My

Business Account, they can grant you authorization using the “Manage representatives” service.

Q7. Clearance Certificates (Plenary)

Subsection 159(2) requires “every legal representative” to obtain a Clearance Certificate prior to distributing assets. Form TX19 includes space for signatures by two representatives. However, it appears that the Clearance Certificate is issued by the CRA to only one of the legal representatives.

We appreciate that the Clearance Certificate indicates the taxpayer for whom the legal representative acts owes no taxes, such that a single Clearance Certificate reasonably provides assurance for all legal representatives. However, the Act clearly requires that “every representative” obtain a Clearance Certificate. Given the potentially severe consequences of failure to obtain a Clearance Certificate, it seems wise and prudent to ensure all legal requirements of the Act in this regard are strictly adhered to.

a) What is the process for multiple representatives (for example, multiple executors of an Estate or multiple Directors of a corporation) to each receive a Clearance Certificate, as required by Subsection 159(2), should they wish to do so? We would note that legal representatives do not always act as a homogenous group in discharging their responsibilities.
b) A Clearance Certificate is required before any distribution of property. However, CRA indicates they will not issue a Clearance Certificate in respect of a corporation prior to its dissolution. Typically, a corporation in the process of winding up will distribute significant assets, if not all of its assets, prior to, or on, dissolution. Is it the CRA’s interpretation that Directors are not legal representatives of the corporation during the corporation’s existence, but only where they continue to hold corporate property subsequent to the corporation’s dissolution, such that they are not liable under Subsection 159(3) in respect of distributions prior to dissolution?
c) If the CRA considers Directors to be legal representatives of the corporation during its existence, how are the Directors of the corporation able to satisfy their obligations under Subsection 159(2) if the CRA will not accept a request for a clearance certificate prior to dissolution?

Canada Revenue Agency (CRA) Response

Part a)

The clearance certificate is issued to the legal representative. If there is more than one legal representative, the clearance certificate is issued to the person whose name first appears on the request at the legal representative’s address. The certificate will include the additional names of legal representatives on the certificate. If more than one address is provided, we send a copy of the certificate to the other addresses.

Part b)

There is no requirement for a corporation to be dissolved prior to the request of a clearance certificate. The CRA can issue a partial clearance certificate if the articles of dissolution are pending closure or we believe the intent is to dissolve the corporation.

Part c)

Not applicable based on the answer provided in b).

Q8. Mandatory Electronic Filing (Plenary)

Pursuant to Subsection 162(7.3), tax professionals who prepare more than 10 returns are subject to a penalty if T1 and T2 returns are not filed electronically. These penalties are $25 for each T1 return and $100 for each T2 return.

We would like the CRA to comment on the general issue of due diligence in the context of a tax professional whose client is unable to provide a signed T183 form by the filing deadline. In such a situation the tax professional is faced with the choice of:

1. not filing the client's return in timely fashion (with the risk of penalty to the taxpayer);
2. electronically filing the return without a signed T183 (in violation with their EFILE agreement); or
3. filing the return on paper (exposing themselves to penalty).

a) Has the CRA assessed penalties pursuant to Subsection 162(7.3)? If so, how frequently? What are the CRA's plans in this regard moving forward?
b) What factors would influence CRA's assessment of due diligence, and what support would CRA expect the tax preparer to retain to evidence their due diligence?
c) Would the CRA agree that filing a paper return, rather than exposing their client to penalty or violating their EFILE agreement, reflect due diligence?
d) Would this penalty be assessed in a situation, as described above, where there is no individual available to sign a T183?
e) Can the CRA provide any further comments on this requirement?

Canada Revenue Agency (CRA) Response

Part a)

The CRA is currently monitoring compliance of the MEF legislation to determine the most effective way to proceed with its enforcement.

Part b)

The assessment will be based on the MEF legislation, which states that tax preparers who prepare more than 10 returns must file them electronically. Certain restrictions do

apply however that may preclude a tax preparer from filing these returns electronically. These restrictions will be considered during assessment.

Part c)

Similarly, please consider the due diligence issue where a tax professional has been engaged to prepare a return for a person for whom no one is authorized to sign a T183. Such a circumstance could arise where a return is due for an individual who lacks competency to sign, and over whom no one has Power of Attorney (for example, a child or spouse looking after a parent or spouse's affairs on an informal basis, or a deceased taxpayer where no Executor or Administrator has been legally appointed).

Part d)

The situation described above would not be considered as an exclusion to EFILE. The T183 must be completed and signed for each initial and amended T1 return, prior to transmission and are monitored for compliance under the EFILE Terms and Conditions. The form must be signed by the taxpayer and can be printed by the Efiler and taken to the taxpayer for signature. Should the taxpayer be unable to sign due to a mental or physical incapacitation, legal authorization should always be in place.

Part e)

Any T183 forms requested from an Efiler during the monitoring process where the T183 is signed by someone other than the taxpayer (the PoA, Trustee, or Executor), copies of the documentation showing proof must be submitted with the requested T183 form. Failure to comply with this may result in EFILE privileges being revoked.

Also, if the question relates to the EFILE number or DCN that is printed on a paper-filed return resulting in a penalty for non-compliance with MEF, they must include the rationale for why the return is being paper filed.

Q9. Private Health Services Plans for Owner-Managers

Many small businesses only have employee(s) that are also shareholder(s). For cost saving reasons, some of those businesses establish notional health care spending account(s) (a type of "private health services plan" under subsection 248(1) of the *Income Tax Act* under which the corporation administers the accounts for their employee(s) as part of the corporation's contract(s) of employment with its employee(s).

Does Technical Interpretation 2005-0163771E5 "Private health services plan for sole shareholder sole employee" dated March 14, 2006 continue to reflect the administrative policy of the Canada Revenue Agency? Provided that an employee (who is also a shareholder) is active in the corporation's business and the benefits under the private health services plan are reasonable and consistent with the benefits that would be offered to an arm's length employee performing similar services, it would appear to us that the

benefits would be derived by the individual's employment and in respect of a private health services plan. Does the CRA agree?

Canada Revenue Agency (CRA) Response

The determination of whether a health care spending account (HCSA) qualifies as a private health services plan (PHSP) is a question of fact. As explained in paragraph 3 of Interpretation Bulletin IT-339R2, Meaning of private health services plan [1988 and subsequent taxation years], a PHSP is a plan in the nature of insurance.

Further, as noted in paragraph 16 of Interpretation Bulletin IT-529, Flexible Employee Benefit Programs, "[I]n order for a health care spending account to qualify as a plan of insurance, there must be a reasonable element of risk. For example, if the plan or arrangement is such that there is little risk that the employee will not be reimbursed for the full amount allocated to that employee annually, then the arrangement is not a plan of insurance and therefore, not a private health services plan." In a situation where a corporation provides a self-insured HCSA for its only employee who is also its sole shareholder (sole employee-shareholder), it is likely that the sole employee-shareholder would be reimbursed for the full amount allocated to him or her annually.

It should be noted that regardless of whether a HCSA qualifies as a PHSP, a sole employee-shareholder who receives benefits out of the HCSA in his or her capacity as a shareholder is required to include such benefits in his or her income under subsection 15(1) of the *Income Tax Act*.

Consistent with the comments in paragraphs 2.2 and 2.3 of Income Tax Folio S2-F3-C2, Benefits and Allowances Received from Employment, unless the particular facts establish otherwise, there is a general presumption that a sole employee-shareholder receives a benefit or an allowance in his or her capacity as a shareholder since the individual can significantly influence business policy. This presumption may not apply if the benefit or allowance is comparable (in nature and amount) to benefits and allowances generally offered to non-shareholder employees of similar-sized businesses, who perform similar services and have similar responsibilities.

Q10. Principal Residence

Folio S1-F3-C2, Principal Residence indicates that CRA will consider a property partially used to earn income to retain its nature as a principal residence in its entirety when three conditions are met, being:

- the income-producing use is ancillary to the main use of the property as a residence;
- there is no structural change to the property; and
- no CCA is claimed on the property.

This longstanding policy is addressed in Guide T4037, Capital Gains, however the "ancillary use" test is absent. Instead, reference is made to the income earning use being "relatively small."

a) Does the new Guide phrasing reflect a substantive change in CRA policy?
b) Does the CRA have any guidelines for the portion of a property which can be used to earn income, while maintaining the entire property as a principal residence?
c) While the Folio discusses a partial change of use at considerable length, the possibility that a portion of a taxpayer's residence is used to earn income throughout the period of ownership receives little attention. This appears to be addressed only in the FAQ document at http://www.cra-arc.gc.ca/gncy/bdgt/2016/qa11-eng.html. Would the CRA consider clarifying this in its Folio, the Guide and/or other published documents, and phrasing them consistently? More broadly, does the CRA have any processes to ensure that their interpretations are expressed consistently in the various publications and media where they appear? Would this penalty be assessed in a situation, as described above, where there is no individual available to sign a T183?
d) It seems that Rulings documents which indicate CRA Guides and form instructions that are not correct do not get timely corrected or updated. For example, 2014-055841117 identified errors in Form T2222 which have not yet been corrected. As that document is only in French, many Canadians, even those who are familiar with Rulings documents, will not easily become aware of the error to permit them to file accurate claims, and we suspect CRA's pre and post-assessing reviewers will rely on the form and its instructions, not the Technical Interpretation. To what extent does the Rulings Division review CRA publications from other areas for technical accuracy?
e) Unrelated to the above, would the CRA consider adding the years for which they show a Principal Residence to have been designated to My Account and Represent a Client?

Canada Revenue Agency (CRA) Response (All Parts)

The CRA could not provide a response at this time.

Q11. Domestic Back to Back Provisions

The Technical Notes to Subsection 15(2.16) indicate that "*it is intended that a specified right will not exist if it is established that all of the net proceeds from exercising the right…must be applied to reduce the shareholder debt*". Absent such an interpretation, it appears that any use of corporate assets as security for a personal debt of a shareholder, including debt payable to an arm's length party on fully arm's length terms, could be subject to inclusion in the shareholder's income on the same basis as if it were advanced to him by the corporation.

Does the CRA consider the technical phrasing of subsections 15(2.16) and the definition of "Specified Right" in subsection 18(5) support the interpretation that, where the security offered by the corporation, may be used only for repayment of the arm's length debt, the shareholder will not be exposed to such an income inclusion?

Canada Revenue Agency (CRA) Response

The back-to-back shareholder loan rules in subsections 15(2.16) to (2.192) are intended to ensure that the application of subsection 15(2), among other rules, is not avoided where a corporation provides debt funding to its shareholder indirectly through one or more intermediaries.

As with the other provisions of these rules, the "specified right" rule in subparagraph 15(2.16)(c)(ii) is generally meant to capture situations in which the corporation itself is the real source of the funding to the shareholder and not the intermediary. As such, where a security interest in the assets of the company is tantamount to putting assets in the hands of the intermediary for its general use, the shareholder loan rules will ordinarily apply. Where, on the other hand, the security interest is a typical commercial security feature of an arm's length lending arrangement, such that the assets that are the subject of the security can only be used to repay the debt and any accrued interest, the shareholder loan rules should generally not apply.

1. Applying the contextual modifications that are necessary to give effect to the reference in subsection 15(2.192) to the "specified right" definition in subsection 18(5), where a financial institution lends money on commercial terms to an individual that is a shareholder of a corporation, the corporation provides a security interest in its property to the lender, and such property can only be used in the event of default on the loan as a means of repaying amounts owing by the debtor under the lending agreement, then the security interest would not ordinarily be considered a "specified right".

2. A security interest granted by a corporation to a creditor that may be used, in the event of default, to repay more than one debt owing by a shareholder of the corporation to that creditor would not, in and of itself, be considered to be a "specified right".

Q12. Prescribed Rate Loans

In Technical Interpretation 2016-0642811E5, CRA suggests that the use of a "loan for value" to a spouse could be subject to GAAR or subsection 74.5(11), if the purpose was to save taxes for the family unit. This is virtually always a purpose, if not the sole purpose, of structuring a loan for value to meet this legislated exception to the attribution rules.

a) Can the CRA elaborate on their technical basis for asserting s. 74.5(11) may apply?
b) Would the CRA provide their reasoning on the view that GAAR can apply to taxpayers who structure their transactions to utilize a specific relieving provision of

the Act? If the purpose of this exception is not to provide a "safe harbour" for loans, what does CRA believe its purpose is?

Canada Revenue Agency (CRA) Response (All Parts)

The CRA could not provide a response at this time.

Q13. Foreign Spinoffs

This issue is similar to past concerns raised with the Matching Program policy of reassessing without contact where certain income slips do not match filed tax returns. Section 86.1 of the *Income Tax Act* permits certain foreign spinoffs to result in an allocation of ACB of the initial investment, rather than a foreign dividend for the full value of spinoff shares received. The dividend is reflected (correctly, given the need for an election) in the T5 slip issued where the investment is held in a Canadian account and a paper election is filed with the return.

However, CRA's matching program does not appear to review any such information which can result in the issuance of an automatic reassessment to include the foreign dividend in the taxpayer's income. How does CRA recommend the impact of this election, and any other election which modifies the appropriate reporting of income reflected on a T Slip, be reported to minimize the administration cost to both CRA and taxpayers/representatives in the course of standard verification activities? Specifically, would CRA prefer the T5 income be reported in its entirety, and a carrying charge (or other deduction) reflected for the income which is eliminated as a consequence of the election.

Canada Revenue Agency (CRA) Response

The CRA's Matching Program instructs their officers to check all available information before contacting a taxpayer or their representative.

The CRA does not have the authority to act outside the boundaries of the laws that they administer and structures their processes to reflect the requirements of those laws. The CRA is required to validate the elections made by taxpayers and therefore, at this time there is no mechanism in place to work around that requirement for either CRA, or the taxpayer or their representative.

However, the CRA does regularly review its processes to find ways to improve their effectiveness and efficiency. The feedback you have provided relating to elections will be taken into consideration during that process.

Q14. Scientific Research and Experimental Development (SR&ED) – Timing of Expenditures

CRA reviewers have recently specified that SR&ED expenditures incurred and expensed in a fiscal year must be claimed for SR&ED in the same year. Their rationale is based on

subsections 37(1) and 37(8), where expenditures must be current in nature (i.e. expensed in the year claimed for SR&ED). In the case of materials, if an item is not recorded as inventory in a prior year and then removed from inventory as an expense in the current year that SR&ED occurred, it cannot be claimed as a SR&ED expenditure. This rationale appears to differ from paragraph 37(1)(a) that allows for "*an expenditure of a current nature made by the taxpayer in the year or in a preceding taxation year*." The guidance in section 3.0 of the Materials for SR&ED Policy does not mention a requirement for materials to be claimed in the same year that they are expensed. Rather, it references not claiming materials solely based on when the materials are removed from inventory for use in SR&ED, manufactured (with no experimental development), or received from a supplier. In instances when materials are manufactured or received from a supplier these materials could be expensed in that year of manufacturing or receipt vs. when they are utilized in SR&ED. Can the CRA confirm whether it is a requirement for materials to be recorded as inventory for accounting purposes prior to being utilized in SR&ED if a company wants to claim SR&ED in a subsequent year?

Canada Revenue Agency (CRA) Response

Materials that have been consumed or transformed in the prosecution of SR&ED in the year must be an expenditure of the company in order to be claimed for SR&ED tax incentives. This means that the material expenditures were recorded in the books and records of the company prior to the materials being used in SR&ED, both of which can occur in the same year. Materials expensed in year 1 for accounting and tax purposes cannot be claimed in year 2 for SR&ED purposes. These materials were already expensed and deducted for tax purposes in the prior year.

Q15. Refund of Premiums – Separated Parents

An RRSP, RRIF or similar account of a deceased taxpayer can be a refund of premiums when paid to a child (or grandchild) who is financially dependent on the deceased for support. Generally, a child is presumed not to be financially dependent where his or her income exceeds the basic personal amount, plus the disability amount if applicable (subsection 146(1.1)). The Act is otherwise silent on determining whether a child or grandchild is financially dependent. CRA's factsheet RC4177 indicates the (grand)child must normally reside with the deceased individual prior to their death (with an exception for a dependent away at school). In Technical Interpretation 2014-052524I7, CRA indicates the following:

> *"We are generally of the view that if a child is living with another individual who is providing support for the child at the time of the annuitant's death, the child would not be considered to be financially dependent upon the deceased for support."*

We have a number of questions regarding this issue:

a) What is CRA's basis for the requirement the (grand)child reside with the deceased individual? While many provisions of the Act require individuals reside together, this is not mentioned in the definition of "refund of premiums" in subsection 146(1), nor in subsection 146(1.1).
b) Where a child resides with both parents (i.e. they are not separated), does CRA consider the child to be financially dependent on both parents, such that either parent's death could result in a refund of premiums to that child?
c) Where a child is in shared custody of separated or divorced parents, does the CRA consider the child to be financially dependent on both parents, one parent or neither parent?
d) Does the existence or amount of child support payable between the parents influence this determination?
e) Where a child is in the custody of one parent, does the CRA consider the child to be financially dependent on that parent only, both parents or neither parent?
f) Again, does the existence or amount of child support payable by the non-custodial parent influence this determination?

Canada Revenue Agency (CRA) Response (All Parts)

The CRA could not provide a response at this time.

Q16. Tuition Credits

Individuals often accumulate unused credits for tuition (and, for 2016 and prior years, education and textbook amounts). Where individuals with an unused claim change provincial residency, the balance available for future claim is typically set equal to the unused Federal credits. Often, the unused credits for the former province of residency exceed this amount, and the excess becomes unavailable for claim.

However, these excess provincial amounts seem to remain on CRA's electronic systems, including My Account and Represent a Client, in perpetuity. With the advent of AutoFill My Return (AFR), these amounts are downloaded to tax software, which assumes they are available for claim. The inevitable adjustment is a waste of time for CRA, and a source of frustration for taxpayers and their advisors.

Would the CRA consider revising the electronic information to adjust these amounts on a change of provincial residency so taxpayers and tax preparers are not mislead regarding the amounts available for claim?

Canada Revenue Agency (CRA) Response

We are unable to make the changes to AFR as users are requesting their tax information before they file their return and the information will be incorrect if they moved provinces. We will not know if the users changed provinces as that information is submitted with the

return. We will add info to the AFR tuition field indicating that the amount is accurate if they are still living in the same province.

Q17. Electric Vehicles

The automobile benefit provisions have been unchanged for many years, but technology continues to evolve. Consider an employee who has been provided with an electric car by an employer. A charging station for this car is installed in the employee's residence. How would the cost of the charging station be addressed in the context of taxable automobile benefits?

a) Would the charging station be considered part of the cost of the vehicle (i.e., a capital component) or part of operating costs (and thus subsumed in the operating benefit)? We note that charging stations are separate assets, in a different class, for CCA purposes.
b) Would the CRA consider the installation of the charging station a benefit outside the automobile benefit provisions?
c) Would the CRAs response change if the employee does not act at arm's length to the corporation (for example, is a significant shareholder) beyond the general issue of determining whether a benefit is received in the capacity of employee or shareholder?
d) As the charging station draws on the employee's electricity, it appears the employee is reimbursing the employer for a portion of the operating costs, which should reduce the taxable benefit, be a deductible operating expense, or be possible for the employer to reimburse. Technical Interpretation 2016-0652861C6 (French) indicated CRA had not formed a specific policy at October 7, 2016. Has the CRA reviewed the appropriate manner for calculating this expense, or do they intend to do so?

Canada Revenue Agency (CRA) Response

Part a): *(Cost of vehicle)*

As noted, an electric charging station is a separate capital asset and would not form part of the cost of the electric vehicle. The 2016 federal budget proposed to include electric vehicle charging stations that supply a specified amount of continuous power in class 43.1 or 43.2. Absent the enactment of these proposed amendments, an electric vehicle charging station (including its purchase and installation cost) would be included in class 8 for CCA purposes.

Part b): *(Installation of charging station)*

The installation of an electric vehicle charging station at an employee's residence may result in a benefit that is included in income under paragraph 6(1)(a) of the *Income Tax Act* (Act). Generally, the value of benefits of any kind received or enjoyed by a taxpayer

in respect of employment are included in a taxpayer's income from employment under paragraph 6(1)(a) of the Act, unless:

- the benefit is specifically excluded under the Act;
- the benefit does not confer an economic advantage on the employee;
- the benefit is not measureable in monetary terms; or
- the employer is determined to be the primary beneficiary of the benefit.

2.24 of Income Tax Folio S2-F3-C2, Benefits and Allowances Received from Employment, discusses the concept of primary beneficiary, and states that:

> *"although no single factor may be conclusive, a positive answer to one or more of the following questions may suggest that the employer is the primary beneficiary of a benefit:*
>
> - *Does the employer have a business purpose for providing the benefit?*
> - *Is the benefit required for the employee to perform the employment duties more effectively?*
> - *Is the benefit required to fulfill a condition of employment?*
> - *Does the employer have a moral or contractual obligation to provide the benefit to ensure that employees are not unduly subject to harm from performing the employment duties?"*

Where an employer provides an employee with an electric vehicle for use in performing employment duties and installs a charging station at the home of that employee, it is our view that in many cases the employer would likely be the primary beneficiary, provided that ownership of the charging station is not transferred to the employee, and that its cost (including installation) is reasonable in the circumstances.

However, this would not be the case if the charging station is owned by the employee. As discussed in ¶2.15 of Income Tax Folio S2-F3-C2, an employee receives an economic advantage when an employer pays for or reimburses the cost of an employee-owned asset, even if that asset is used for employment purposes. The value of the benefit included in the employee's income under paragraph 6(1)(a) of the Act would be the fair market value of the asset (including any installation costs), less any amount paid by the employee.

Part c): *(in cases of employee not acting at arm's length)*

The Canada Revenue Agency's position concerning benefits received or enjoyed by employee-shareholders is discussed in ¶2.2 to 2.4 of Income Tax Folio, S2-F3-C2, Benefits and Allowances Received from Employment. In our view, there are no specific factors beyond those described in Income Tax Folio S2-F3-C2 that would be considered in situations involving electric vehicles.

Generally, if the employer installs a charging station at the home of an employee-shareholder, who received the benefit derived from the installation of the charging station in his or her capacity as a shareholder, the value of the benefit would be included in income under subsection 15(1) of the Act, regardless of whether the employer or shareholder owns the charging station.

Part d): *(Employee reimbursing portion of operating costs)*

Under the Canada Revenue Agency's administrative policy regarding third-party reimbursements, the electricity costs that are paid by an employee to a third party and attributable to the personal use of an employer-provided electric automobile (i.e., charging) will reduce the operating expense benefit determined under paragraph 6(1)(k) of the Act where such costs can be established. Further, if an employer reimburses an employee for reasonable employment-related electricity costs paid by the employee, the reimbursement will not generally give rise to a taxable benefit.

Where an employer does not reimburse an employee for employment-related electricity costs paid by the employee and the employment-related electricity costs can be established, the costs may be deducted by the employee as motor vehicle travel expenses if all of the conditions in paragraph 8(1)(h.1) of the Act are met. These conditions are that the employee:

- was normally required to carry out his or her employment duties away from the employer's place of business (or in different places);
- was required by the contract of employment to pay such expenses; and
- did not receive a non-taxable allowance or reimbursement in respect of the motor vehicle expenses.

Where the employee meets the conditions of paragraph 8(1)(h.1) of the Act, subsection 8(10) of the Act requires the employee to obtain a completed and signed Form T2200, Declaration of Conditions of Employment, from their employer.

Q18. Medical Expenses - Assisted Death

The Supreme Court recently issued its ruling in Carter v. Canada (2015 SCC 5) which indicated that Canadians are entitled to obtain medical assistance to end their lives, under appropriate circumstances. Does the CRA consider costs of medical assistance to end an individual's life a medical service for purposes of the medical expense tax credit?

Canada Revenue Agency (CRA) Response

The CRA is not able to provide an answer at this time.

Q19. Small Business Deduction Multiplication

Budget 2016 included a number of provisions to limit access to the small business deduction (SBD), the full ramifications of which appear extremely broad.

We appreciate that these provisions are very broad, and very recent, and that the CRA may not have formalized its interpretations on some of the items which follow. We would ask that, where these matters have not yet been reviewed by the CRA, their interpretations be provided at a later date, whether in the written responses or in a subsequent addendum.

Basically, the new Specified Corporate Income (SCI) rules will restrict access to the SBD on any active business income earned from providing services or property to another private corporation (PCO) where there is common ownership with the CCPC, absent exceptions and/or designations of the business limit.

The SCI rules will apply where a direct or indirect interest in PCO is held by any of:

- the CCPC receiving these fees;
- any shareholder of that CCPC; or
- any person who does not deal at arm's length with any shareholder of the CCPC.

For ease of reference, the PCO paying the revenues are referred to herein as "tainted parties", and income subject to these provisions are referred to as "tainted income". We would note that SCI is technically the income which is eligible for the SBD, not the income ineligible for the SBD, which is not defined by any legislative term.

a) Can the CRA provide clarification with regards to what CRA would consider a direct or indirect interest? For example, what are CRA's views on the following:
    (i) **Share ownership** - Does any share ownership, however small, result in the application of these restrictions? For example, a 0.01% vs. 1% vs. 50% interest?
    (ii) Do the characteristics of the shares matter? For example, whether they are voting, participating or fixed value?
    (iii) Does a shareholder of a corporation hold an indirect interest in any PCo in which that corporation holds an interest? If so, does the CRA consider this to apply through multiple layers of corporate ownership?
    (iv) **Cooperative Corporations** (Co-ops) are often the primary market for farming (and fishing) products. Often, the producer is required to own an interest in the Co-op, and may be restricted or prevented from selling to any other party. Would the members of these co-ops be subject to these rules, losing access to the SBD?
    (v) **Credit unions** (CUs) often automatically make every account holder a member/ shareholder. Would such a relationship constitute an interest in the credit union?

(vi) Do **loans** or other indebtedness due from a corporation constitute an interest?
(vii) Does the size of the loan matter?
(viii) Do the loan's characteristics matter (for example, convertible loans?
(ix) If a person provided a guarantee for the debts of a corporation, would that person have an interest in the corporation?
(x) **Profit-sharing plans** - If an employee of a corporation who participates in a profit-sharing plan considered to hold an interest solely due to such participation?
(xi) Would this differ if the profit-sharing plan acquires shares of the corporation?
(xii) Would this differ if the profit share is linked to the value of the corporation's shares?
(xiii) Would a **bonus** tied to the performance of a corporation constitute an interest?
(xiv) Could a **close and/or dependent business relationship** with another corporation constitute an interest? For example, if a corporation provided a significant amount, or all, of a second corporation's inventory or services for resale, would the closeness of this type of business relationship indicate an interest? Are there any types of business relationships that may be considered an interest in the other corporation?
(xv) Would a **beneficiary** of a **trust** that has an interest in the corporation be considered to hold an interest?
(xvi) Would a **trustee** of a **trust** that has an interest in the corporation be considered to hold an interest?
(xvii) Would the characteristics of the trust influence this determination (for example, would personal trusts carry different ramifications than mutual fund or unit trusts)?
(xviii) Would a member of a partnership hold an indirect interest in any PCo in which that partnership holds an interest?
(xix) Does this interpretation vary if the corporation, trust or partnership is an investment vehicle available to the general public? For example, would the CRA consider an investor in an iShares trust to own an indirect interest in every holding of that trust?
(xx) Any other connecting factors which CRA would consider would, or might, constitute an interest.

b) When determining what portion of a corporation's "amounts each of which is Income" which is not eligible for the SBD pursuant to the SCI rules, must we consider this to be the gross sales made to a party described in Subparagraph (a)(i) of the definition specified corporate income in subsection 125(7) for the year, or is this based on revenues net of expenses? If the answer is the latter, can some guidance be provided with regards to the allocation of expenses? For example, can

expenses be allocated proportion to sales to tainted parties, or must expenses related to each sale be tracked?

c) Income earned directly or indirectly from the provision of services or property to a tainted party will not generally be eligible for the small business deduction. Can the CRA provide guidance with regards to circumstances where income would be considered to be earned "indirectly"? Specifically, can you comment on the following scenarios:
    (i) A farm corporation (FCo) produces grain and sells it directly to an untainted bakery corporation (BCo). BCo produces bread and sells it to catering companies, one of which (CCo) has a shareholder who is not at arm's length (NAL) to a shareholder of FCo. Would the earnings from the supply of the grain related to BCo's sales to CCo be considered earned indirectly, and thus tainted?
    (ii) Consider an engineer that provides engineering services through a wholly owned corporation (ECo). ECo provides services to a general contractor (GCo) that constructs buildings for a developer corporation (DCo). A shareholder in DCo is NAL to the engineer. Would earnings by ECo from revenues received from GCo be tainted? Would it matter if GCo charged SCo specifically for the engineering services, as opposed to billing for the project as a whole?

d) A PCo may assign a portion of its small business limit to a CCPC that has provided services or property to it, converting tainted income into SCI eligible for the SBD in the CCPC. One of the limits on the amount assigned is the "amount determined by the Minister to be reasonable". Can the CRA comment on what guidelines or factors would be used to determine what amount is "reasonable? Are these specific situations where the CRA anticipates this discretionary power would be employed?

e) In order to implement an assignment, a prescribed form must be completed and signed by both the assignor and assignee. Due to the timing of these provisions, some of these forms may already have been required. What steps does the CRA recommend for corporations which may have missed this deadline? Will the CRA accept late assignments, and if so under what circumstances?

f) The definition of Specified Partnership Income in Subsection 125(7) imposes significant limitations on members (including designated members) of a partnership which are corporations (a "corporate partner"). In general terms, these restrictions arise where the partnership provides services to a PCo or a Partnership in which a corporate partner holds an interest, directly or indirectly.

Where a partnership (PTR1) holds an interest in a corporation (PCo), or is itself a member in a second partnership (PTR2), would every partner of the partnership be considered to own an interest in the PCo or PTR2, such that revenues received by PTR1 for services provided to PCo or PTR2 could potentially result in loss of SBD access to all partners? Assume that all or substantially all of PTR1's revenues do not arise from other sources.

Canada Revenue Agency (CRA) Response (All Parts)

The CRA could not provide a response at this time.

Q20. Corporate Tax Verification Activity

In the 2016 version of this Round Table, Question 2, CRA shared details of the Small Business Deduction (SBD) Project. CRA indicated that 40% of these reviews resulted in adjustments to their claims, with no common areas mandating educational efforts.

a) Given the significant rate of adjustments, has this project been expanded to additional corporations? Are there any plans to do so in the foreseeable future?

b) Since the fall of 2016, members have reported corporate clients receiving correspondence "Re: Limited review of your corporation income tax return". These request supporting documentation, including proof of payment, for expenses under specific GIFI codes. Most, if not all, have related to professional fees. Can the CRA comment on the following:
   (i) The overall results of the program to date, including the frequency of reassessments and any common issues resulting in such reassessments.
   (ii) Whether CRA is continuing the project in respect of professional fees specifically, based on those results.
   (iii) Whether CRA is expanding the project to other expense categories and, if so, the types of expenses we can expect to see in the foreseeable future.

c) Currently, only limited categories of documents can be submitted online, often requiring a reference number. At least some of the "Limited Review" letters provide reference numbers for this purpose. Can the CRA provide an update of planned expansion of the ability to submit documents electronically, including expected timing of these initiatives?

d) Recently, some members have reported auditors requesting the conversion of paper documents, including general ledgers, trial balances and journal entries, to pdf, or even searchable pdf, electronic documents. This can be a time-consuming and expensive process for the taxpayer. Subsection 230(1) and 230(2) imposes the requirement that taxpayers and charities, respectively, maintain books and records. Subsections 230(4.1) and (4.2) clarify the requirements where records are maintained electronically. CRA Technical Interpretation 2014-0526121E5 confirms

that “taxpayers may choose to maintain their books and records electronically, in paper format, or in a combination of the two formats”. Our understanding is that any form of records are acceptable, provided they properly support the filings and are legible.

(i) Does the CRA believe the taxpayer is required to convert their records to alternative formats on CRA request? If CRA believes there is an onus on the taxpayer to convert documents to alternative formats, please provide the legislative basis for this belief.

(ii) Will CRA similarly provide proposal letters, their own working papers and similar documents in such format(s) on taxpayer request?

Canada Revenue Agency (CRA) Response

Part a): *(Project Expansion)*

CRA reviews various aspects of the T2 return to ensure compliance. The review of the Small Business Deduction (SBD) will continue in our 2017 program and the foreseeable future. As SBD claims continue to be reviewed for compliance, it can be expected that additional corporations will be included in this review.

Part b): *(Supporting documentation)*

(i): *(Overall results)*

Approximately 30% of the returns reviewed for the professional fee expenses were subject to a reassessment resulting in a tax increase. Common issues resulting in a reassessment include (but are not limited to):

- the expense was not incurred to produce business income;
- the expense was for the purchase of a capital asset;
- the professional fees were personal in nature and not a business expense;
- supporting documentation has not been provided; and
- the expense was reported on schedule 125 and claimed as a capital loss resulting in a double deduction.

(ii): *(Continuation of project)*

CRA periodically considers a variety of compliance project. Based on the results and the number of reassessments required, it is possible that expenses for professional fees are reviewed in the future.

(iii): *(Expansion to other expense categories)*

CRA will continue to review a variety of expenses to ensure that expenses claimed are valid and deducted correctly.

Part c): *(Planned expansion to submit documents electronically)*
The CRA is not able to provide an answer at this time.

Part d)

(i): *(Conversion of documents)*
The CRA is not able to provide an answer at this time.

(ii): *(Provision of documents)*
The CRA is not able to provide an answer at this time.

Q21. T1 Adjustment Processing Turnaround

Overall, we note that we have experienced significant delays in processing T1 adjustments. Currently, numerous phone calls are made between tax professionals and the CRA simply to address the status of adjustments. An online system that would indicate the anticipated processing time and the current status of the adjustment request would be an effective means to reduce the number of phone calls to the CRA as well as provide greater clarity to the process.

a) Can the CRA comment on any additional resources being allocated to this area?
b) Could the CRA provide an indication on My Account/Represent a Client that an Adjustment has been received, and ideally the anticipated processing time?
c) Additionally, a concern with T1 Adjustments is the desire to pay any balances and prevent additional interest costs. CRA systems do not seem to permit amounts to sit in prior year accounts. Instead, they are processed to current year instalments. It has been problematic in the past shifting these amounts between years. During these delays, returns may be filed and instalments on CRA records applied.
    (i) Is the CRA considering a more expedited transfer mechanism through My Account/Represent a Client?
    (ii) Would the CRA consider a “pending account” so payments can be held until an adjustment is processed? Is there a method of placing funds “on deposit” for a year assessed previously while an adjustment is in progress?

Canada Revenue Agency (CRA) Response

Part a)
We are aware of the significant delays in processing T1 Adjustments resulting from higher than usual inventory levels. We are actively addressing the delay and allocating additional resources to this area as we strive to return to our usual service standards.

Part b)
An adjustment request submitted electronically via either ReFILE or Change My Return service is updated with an indicator that an adjustment has been received, if it is not processed immediately. This functionality, unfortunately, does not exist for adjustments

submitted by paper until the adjustment is assigned to an assessor for review and processing. We continue to evaluate improvements to both the My Account and Represent a Client service including improvements to notification functionality.

Part c)

(i)

The CRA is always looking for suggestions on enhancements to our online services. We continue to evaluate improvements to both the My Account and Represent a Client service and will keep your suggestion in mind for future enhancements to these services.

(ii)

Thank you for the suggestions. At this time, the CRA doesn't currently have a "pending account" for payments pertaining to an anticipated adjustment. We are considering such changes to our logic and will take your suggestions under advisement for future enhancements.

Q22. Section 55 and Safe Income

We ask that the CRA consider and comment on the below examples on the basis that there are no other factors present in the facts and circumstances which would indicate inappropriate or abusive planning being undertaken by the relevant parties, and understand that CRA will appropriately reserve the right to reach a different conclusion where warranted by facts and circumstances beyond those set out below.

Example Part A:

Assume a corporation (a CCPC) has a single class of voting common shares. The only assets of the corporation are real estate with a fair market value of $7 million. The adjusted cost base of the real estate is $4 million, and capital cost allowance of $1 million has been deducted. The fair market value of the shares is determined to be $5 million (being $7 million of real estate, less $1.5 million of mortgage debt, $0.3 million of corporate tax, net of RDTOH, on a $3 million capital gain and $0.2 million of corporate tax, net of RDTOH, on $1 million of recapture). The safe income of the corporation at the freeze date is $1.5 million.

The common shares are exchanged for typical estate freeze shares redeemable for $5 million, bearing a 2% cumulative annual dividend, and new common shares are issued for a nominal amount.

a) Would the CRA agree that the first $100,000 of safe income realized annually properly attributes to the estate freeze shares, being their preferential cumulative annual dividend?
b) Does the CRA agree that as the real estate is sold, the recapture and taxable capital gains realized, up to the amounts inherent when the estate freeze shares were issued, and net of non-refundable tax paid on the resulting taxable income,

would properly increase the safe income attributable to the estate freeze shares, and not the common shares?
We understand this to be the case based on the economic reality that unrealized recapture and gains which contributed to the value of the estate freeze shares has now been realized. (*NOTE*: We recognize that the non-taxable portion of any capital gain does not generate safe income.)

c) Does the CDA resulting from the deemed capital gain pursuant to subsection 55(2) occur on the date the dividend is paid or at year end?

d) Does the CRA agree with the principal, illustrated in the below Example B, that safe income can shift between share classes over time?

Example Part B:
The sale of the real estate will give rise to a capital dividend account (CDA). At the freeze date, we would suggest that $1.5 million of the value of the preferred shares was attributable to the non-taxable portion of the $3 million capital gain inherent in the real estate. If capital dividends in an amount other than $1.5 million are ultimately directed to the preferred shares in the form of capital dividends, whether paid or deemed paid when the estate freeze shares are redeemed, it seems reasonable that the shift of CDA from the amount reasonably attributable to the freeze shares would result in a similar shift in safe income between the common and preferred shares.

Assuming the inclusion rate remains 50%, and $2 million of capital dividends are ultimately directed to redemption of the preferred shares, this would suggest that $500,000 of safe income attributable to the preferred shares has been shifted to the common shares. Similarly, if all CDA is used to pay capital dividends to the common shares, this would suggest $1.5 million of safe income which would have been attributable to the common shares is now attributable to the preferred shares.

Canada Revenue Agency (CRA) Response

Unfortunately, the CRA is not in a position to respond to question 22 in the conference forum; we would be able to process this question as a technical interpretation request if requested.

Q23. Section 55 and Part IV tax exception

The amendments to Section 55 brought a change to the historical exception for dividends subject to Part IV tax as highlighted in Technical Interpretation 2016-0671491C6.The exception applies only where the Part IV tax is not recovered in the course of the series of transactions including the dividend potentially subject to Subsection 55(2).

a) Considering that parties always anticipate recovering Part IV tax by future dividend payments, which is consistent with the policy behind the refundable nature of this tax and integration, under what circumstances would CRA consider a dividend which recovers Part IV tax not to be part of the series of transactions including receipt of that dividend?

b) In Technical Interpretation: 2016-0671491C6, the CRA stated that Holdco must file an original return and also an amended one for the year in which it received a dividend from Opco. The first return to report the Part IV Tax owing and the Part IV Tax refund resulting from Holdco's dividend payment to the individual shareholder. The second return adjusted to reflect the application of s. 55(2) of the Act to the dividend received by Holdco. Given these comments, how should inter-corporate dividends be reported that are received and subject to 55(2) assuming there is no Part IV tax involved and considering that the current schedules do not appear to provide for this? In particular:
   (i) On schedule 3, should the actual dividend received be reported or the amount deemed to be a tax free inter-corporate dividend?
   (ii) On schedule 6 of the T2, should the deemed capital gain be reported and, if so, how?

Canada Revenue Agency (CRA) Response (All Parts)

The CRA is not able to provide an answer at this time.

Q24. NR4 Filings – Estates and Trusts

CRA's Technical Interpretation 2015-0608201E5, released in early 2017 (in French) indicates that capital distributions from estates and trusts are required to be reported on NR4 slips as they are deemed to be "income" by Subsection 212(11), despite not being subject to any form of withholding tax [except pursuant to subparagraph 212(1)(c)(ii)]. In the Technical Interpretation, the CRA indicates that Code S should be used to indicate these payments are exempt. That code is labelled "other exempting provisions" which seems like it may attract CRA scrutiny. The NR4 Guide does not appear to address this issue specifically, referring to "estate or trust income" or "estate and trust income", which we expect most readers would consider excludes capital distributions.

a) Will CRA be enforcing this interpretation?

b) If so, should estates or trusts who have failed to file NR4 slips in the past initiate Voluntary Disclosures? For what period will CRA require such filings?

c) Will CRA update its NR4 Guide to discuss this requirement more explicitly to confirm that the filing is required?

d) Would the CRA consider a separate exemption code to more readily identify such filings and to distinguish it from the “other exempting provisions” that may attract more CRA scrutiny?

Canada Revenue Agency (CRA) Response

Part a)

Yes, the CRA can enforce this interpretation. Where a person resident in Canada pays or credits an amount under Part XIII or XIII.2 to a non-resident person on account or in lieu of payment of or in satisfaction of any of the amounts described in Regulation 202 of the *Income Tax Act*, there is a requirement to file an NR4 information return, even if the amount paid was not subject to tax under Part XIII or XIII.2 of the Act. We have communicated this interpretation in our publication, “T4061 NR4 – Non-Resident Tax Withholding, Remitting, and Reporting” under the section, “NR4 Slips”. Every taxpayer who fails to file an NR4 information return as required by the Income Tax Act or its Regulations may be liable to pay a penalty.

Part b)

Payers may initiate a request under the Voluntary Disclosure Program (VDP) to come forward and correct inaccurate or incomplete information with respect to the filing of the NR4 information return, past or present.

Part c)

We will review and update the information in our publication, “T4061 NR4 – Non-Resident Tax Withholding, Remitting, and Reporting” to clarify and strengthen the NR4 reporting requirements, where necessary.

Part d)

We will undertake a review of the current list of NR4 exemption codes to determine whether new separate exemption codes for specific tax scenarios are required to meet our NR4 reporting requirements.

Q25. Estates – Income Paid or Payable

An individual’s will commonly provides for his estate, or the residue thereof, to pass to one or more beneficiaries in fixed proportions. As an example of such a will, assume the deceased has left the entirety of his estate to his three children, in equal proportions. All of the children are over age eighteen, and no Trust provisions are provided in the will. It provides for the executor to simply pay all debts, and distribute the estate in equal portions to the three children. Assume further that the estate assets have not been fully distributed, but that the estate has passed the end of the “executor’s year,” such that the beneficiaries may possess the legal right to enforce payments from the estate.

a) Does the CRA consider the income of the estate to be payable equally to the beneficiaries by virtue of their entitlement to an equal share of the residue?

b) If the answer to (a) is “no,” what action would the CRA consider the executor is required to take to result in the income being payable?

c) If the answer to (a) is “yes,” does the CRA perceive any action the executor could take to result in the income not being payable to the beneficiaries? Assume that a designation under Subsections 104(13.1) and (13.2) is not possible, as this would result in taxable income in the estate.

d) Does the CRA accept that income earned in the executors’ year is not payable to beneficiaries, such that it would be taxable in the estate absent payment to the beneficiaries? Does this depend on whether the estate fiscal year falls entirely within the Executors’ Year?

Canada Revenue Agency (CRA) Response

Parts a) to c)

The CRA has previously noted that pursuant to subsection 104(6) there may be deducted in computing the income of an estate or trust for a taxation year, such amount as the estate or trust claims that would be its income for the year as became payable in the year to a beneficiary. Subsection 104(24) provides that, for the purposes of subsection 104(6), an amount is deemed not to have become payable to a beneficiary in the year for the purposes of subsection 104(6) unless the amount was actually paid to the beneficiary in the year, or the beneficiary was entitled in the year to enforce payment of it.

On the death of an individual, the individual's property comes under the control of an executor or other personal representative and thus the property is held in an estate, which is treated as a type of trust for purposes of the Income Tax Act. It is the executor's role to administer the estate which involves, inter alia, determining and paying creditors and distributing the remaining assets of the estate to the beneficiaries as soon as possible. Generally, the law provides the executor with a year (often referred to as the “executor's year”) to administer an estate, during which time the right to income of the estate is unenforceable by a beneficiary. After this time, it is a question of fact as to whether the executor is able to distribute property and whether the income of the estate is payable to the beneficiaries

In the example presented, the entitlement to an equal share in the residue of the estate would not in and of itself result in the income of the estate being automatically payable to the beneficiaries. The executor and the beneficiaries would instead have to determine

whether the executor has complied with the terms of the will as a whole and any laws affecting the administration of the estate.

Part d)

With respect to the executor's year, paragraph 6 of Interpretation Bulletin IT-286R2 notes that the CRA will consider the income of the trust for that year to be payable to the beneficiary or beneficiaries of the trust pursuant to subsection 104(24), where the sole reason for the rights of a beneficiary being unenforceable is the existence of an executor's year, the taxation year of a testamentary trust coincides with the executor's year, and all of the beneficiaries agree to this treatment.

This portion of the question appears to contemplate a situation in which the executor has chosen the initial taxation year end of the estate to be a date that is prior to the end of the executor's year; as a result, the executor's year would extend into the second taxation year of the estate.

In this situation, the comments in paragraph 6 of IT-286R2 would also apply to the initial taxation year of the estate.

Where a portion of the executor's year falls within the second taxation year of the estate, it is possible that income earned by the estate during that portion of the year may be subsequently paid or become payable to the beneficiary during the remainder of the estate's taxation year. As a result, the income earned during the portion of the executor's year which falls within the estate's second taxation year may instead be taxable in the beneficiaries' hands. This ultimately relies on whether an amount is paid or whether the beneficiary is entitled to enforce payment of the amount, which is dependent on the applicable facts and law.

Q26. Estate and Trust Tax Returns

We have had a few experiences in recent years where a late filing penalty is assessed on Estates with a non-calendar year end based on a filing deadline of 90 days after December 31, when the year end is not December 31. These are generally reversed after contact with CRA, but result in professional fees, delayed clearance time and expended CRA resources. With the advent of Graduated Rate Estates making non-calendar years ends even less common, the assumption of a December 31 year end may be more common going forward.

a) How do CRA's systems determine the filing deadline, and resulting application of penalties? Can CRA modify its systems to reduce or avoid these circumstances in the future?

b) When returns are prepared for deceased individuals and their estates, the administration cost is often increased because the CRA will request that the tax

preparer furnish the will and death certificate on numerous occasions, including: with a new consent request, with the estate return, when requesting clearance certificates, to the collections department and when a new agent begins working on the file. Is it possible for these documents to be more accessible between departments to reduce the burden on the taxpayers and their representatives?

c) The new version of the 2016 T3 Trust Income Tax and Information Return Form "T3 RET E (16)" contains a number of modifications from prior year's forms to the "Other Required Information section." Among the changes made, question #8 now includes the following question:

> "Does the trust hold shares in a private corporation? If yes, attach a note giving details of the corporation, including, name, business number and the number of shares held."

With a great percentage of family trusts owning shares in private corporations, we would anticipate a large number of T3 filings being required to include this attached schedule.

(i) Would the CRA comment what they intend to do with this additional information?

(ii) What were the circumstances, if any, which led to this information being required disclosure?

(iii) If this requirement remains, would the CRA consider adding a formal schedule to the T3 where this information can be entered on an electronic basis?

Canada Revenue Agency (CRA) Response

Part a)

CRA systems are programmed to determine the filing deadline for trusts to be 90 days after the tax year end.

CRA's systems will use the tax year end of the return being assessed and the date the return is received with CRA to determine if the return is filed on time. The systems are programmed to identify late filed returns and will apply the penalties as per the legislation outlined in the *Income Tax Act*.

Without specific details about the accounts where a late filing penalty is assessed on estates with a non-calendar year end and reversed, CRA is not in a position to complete an evaluation to determine if a system change is required. Presently the CRA is looking at ways to improve service, minimize the effort required for taxpayers to meet their obligations and to address the rapidly-evolving service expectations.

Part b)

CRA appreciates the information relating to the additional burden faced by a taxpayer when it reaches out for further information. We will collaborate with our internal partners to review processes for sharing information that has been submitted by taxpayer.

Part c)

(i)

The CRA will integrate this information into its regular risk assessment methods to determine trusts that may be subject to an audit.

(ii)

It has been noted during compliance activities that trusts may be created for the purposes of sharing income and capital gains from corporations to beneficiaries. This type of income splitting or multiplication of the capital gains exemption is an area that often requires further review. Based on our audit experience it was decided that the addition of this question to the T3 would aid in identifying trusts to be audited.

(iii)

We recognize that creating a schedule in the T3 that is captured electronically would ease filing for taxpayers and we will consider making such a change in the future.

GST Questions

Q1. Incorrect Reporting Entity (3 Separate Questions)

a) A common situation occurs when the correct amount of net tax is reported and remitted by someone other than the person who was required to file the GST/HST return. Often the two persons are associated or perhaps even closely related. The government is not out of pocket: the wrong GST/HST account has been credited for the returns/payments/refunds.

Another common situation is where a return is filed but the reporting period indicated on the return does not match a period expected by CRA. In one case, the CRA had closed the account because the taxpayer was in bankruptcy. Although the return was properly due it was rejected by CRA.

We would expect that the correction of this type of mistake to be fairly straightforward as the net tax result will be the same.

In the case of the wrong person filing the return and the correct person was not registered, CRA would not have to amend returns on the one side but only post the amounts from the returns filed incorrectly. In our experience, the returns that need to be transferred are given to different auditors and often the credit returns are segregated and adjusted in the present time, while the debit returns are back dated creating penalties and interest. The payments are not always applied to the proper registrant's account when they were received by the CRA. The simplest solution would be to correct the reporting on a go forward basis, but if the proper entity was not registered, the CRA has no statutory limits on assessing back in time for amounts already reported and paid.

Canada Revenue Agency (CRA) Response

The CRA assesses and processes tax returns and payments for individuals and businesses as quickly and accurately as possible, providing taxpayers with early certainty to help them manage their tax affairs with confidence. Our goal is to reduce red tape by providing comprehensive, streamlined and timely services to individuals and businesses while securing Canada's revenue base.

Under section 238 of the *Excise Tax Act* (ETA), every registrant is required to file a GST/HST return for each of their reporting periods in accordance with the timing requirements set out in that section. In turn, our GST/HST processing systems are built to allow registrants to file only their required GST/HST returns. There is no provision in the ETA under which the CRA is permitted to transfer or file a return for a registrant from one legal entity to another. To ensure we are upholding our commitment to safeguarding the tax information entrusted to us and maintaining an accurate information trail, we require written correspondence from the registrant stating specific details before making any changes to a GST/HST return that has been finalized in our systems.

b) In the case of the return being filed for a period that CRA is not expecting return, the taxpayer is assessed a penalty for late filing of a return and must write for penalty and

interest relief. The simplest solution here would be to post the return and waive the penalty at the same time.

Canada Revenue Agency (CRA) Response

When the CRA processes a GST/HST return, certain system edit checks are completed to ensure that it is correct, valid, and ready to be posted. If the return being filed is for a period that is not expected in our system, the return is sent for further review and the appropriate action is taken in accordance with our procedures, which may include an attempt to contact the taxpayer to determine the correct period to apply the return to. If the return cannot be posted to the account and must be refiled, there is no mechanism to provide automatic relief.

One item to note is that submitting taxpayer relief requests to the CRA in writing is no longer the only method available. Requests to cancel penalties or interest and all supporting documents for taxpayer relief can now be submitted online through My Business Account or Represent a Client by selecting the "Submit documents" service.

c) Can the CRA please indicate a good method to manage this sort of correction, without creating artificial penalties and interest?

Canada Revenue Agency (CRA) Response

Arguably the best way to mitigate the impact of situations like this is to ensure these corrections never need to happen in the first place. Registrants who take advantage of the tools we offer in the My Business Account and Represent a Client portals are able efficiently and effectively manage their tax affairs by viewing all of their expected returns, making adjustments to GST/HST returns they have filed in the past, and so much more. There are system validations in place when you file a return through one of our portals that will not let a registrant file a return for a period that is not expected on their GST/HST account. Find out more by visiting www.cra.gc.ca/mybusinessaccount and clicking on "What can I do on My Business Account?"

Q2. CRA Assessing using paragraph 296(1) (b)

We are hearing that the CRA is starting to use paragraph 296 (1) (b) of the ETA to assess the recipient of taxable supplies, in situations outside of insolvency and bankruptcy. For example, the recent BC Provincial Court decision in Bagha Enterprises V Mangat (2016) BCPC 374, revealed that on the sale of taxable real property, the CRA assessed both the seller (the supplier) and the buyer (the recipient), using paragraphs 296(1)(a) and 296(1)(b) respectively.

What suggestions does the CRA have for a recipient of taxable supplies resolving liabilities created by section 165 of the ETA?

Canada Revenue Agency (CRA) Response

While paragraph 296(1)(b) of the Act does provide the Minister with the discretionary authority to assess a recipient for tax payable on a taxable supply (other than a zero-rated

supply) made in Canada, the CRA will not generally intervene to assess the recipient for tax imposed under section 165 of the Act, but may assess a recipient for tax payable in circumstances of potential revenue loss. The usual practice of the CRA with respect to the tax payable under section 165 of the Act, is to look to the supplier to fulfill its obligations to charge, collect and remit tax on taxable supplies made in Canada.

Q3. Using a section 273 JV Operator election for pipeline construction

There is some uncertainty about using the section 273 election for reporting activities of joint ventures involving pipeline construction. There appears to be a suggestion that the operator is not engaged in a joint venture "for the exploration or exploitation of mineral deposits or for a prescribed activity".

Can the CRA suggest, in a general way, why the construction of pipelines to be used in moving natural resources from the well site to the processing plant or from the plant to the market place, fails to meet the requirements of the election where they have a qualified operator and a proper written JV agreement? Perhaps in the specific instance there is a fact pattern that makes it different than other pipeline construction or does the restriction apply to all such projects?

Given the 2017 Federal Budget comment that section 273 election will be amended, is there anything in the Notice of Ways and Means that will be materially changing that will allow joint venture activities that are currently not allowed to use the election, may in future be given that opportunity?

Canada Revenue Agency (CRA) Response

Section 273 provides for an election under which participants in certain joint ventures can elect for one participant that is a GST/HST registrant to be the “operator”. Where a valid election is made, the operator accounts for the GST/HST collectible on taxable supplies made by the operator on behalf of the other participants. The operator also claims any input tax credits in relation to the expenses incurred by the operator on behalf of the other participants in respect of the joint venture activities.

For the purposes of section 273, in order to be eligible to make the section 273 election, a joint venture must be engaged in the exploration or exploitation of mineral deposits or in one or more prescribed activities listed under the *Joint Venture (GST/HST) Regulations* (the Regulations).

Paragraph 3(1)(a) of the Regulations provides that “the construction of real property, including feasibility studies, design work, development activities and the tendering of bids, where undertaken in furtherance of a joint venture for the construction of real property” is a prescribed activity.

Where parties enter into a written joint venture agreement with the stated purpose of constructing a pipeline and related infrastructure, to the extent that it is affixed to the ground and intended to remain there on a permanent basis, subject to a review of the agreement, the activity may be a prescribed activity under paragraph 3(1)(a) of the Regulations and an election under section 273 may be made.

Any enquiries on the current review of section 273 should be directed towards the Department of Finance.

Q4. Inconsistent RIP Assessments

Over the past year service issues have steadily been improving with the Refund Integrity Program (RIP); however taxpayers and practitioners are still encountering some challenges that we would like to have further clarification and understanding.

a) There has been an increase in the number of 30 day letters being issued to provide responses to requests for information and proposed audit assessments. Where there have been some challenges is when there has been a last minute response to the letters by the taxpayers. In some circumstances taxpayers and practitioners may be away or unable to respond immediately to these requests; in some circumstances responses are sent a day or two before the deadline. Despite providing the details prior to the deadline, the changes and adjustments are processed resulting at times in unnecessary assessments and related collection action. Is there any process that could be put into place whereby the CRA would give a "final warning" in the form of a telephone call before the assessment or adjustment is processed? We feel that despite this being some additional work for the RIP Agents, it can save considerable time and resources in collections and appeals.

b) Another challenge has also presented itself during RIP reviews. There are situations where the RIP Agent is using the revenues reported on line 101 of the GST/HST return to calculate the estimated amount of tax that should have been collected. Agents are then informing taxpayers that they will be assessed on these amounts unless they can prove that the sales are not taxable. There have been situations where all of the sales invoices for entire reporting periods are being requested and explanations provided on each of them as to why GST/HST was or was not charged. The auditor may also request additional supporting information to support why or why not the GST/HST was charged. Due to the fact that line 101 encompasses taxable, exempt and worldwide revenues, is the CRA prepared to assess GST/HST based on amounts reported on line 101?

Canada Revenue Agency (CRA) Response

The GST/HST Refund Integrity Program is treated as national workload by the CRA. This means that a registrant's return can be reviewed by any Tax Services Office in Canada. When a return is selected for review, correspondence is sent to the registrant which includes the examiner's name and contact information. It also includes the name of the examiner's team leader and contact information. If you are experiencing any challenges in the examination process, we encourage you to resolve this with the examiner. If resolution is not possible at this level, then the team leader can be contacted to deal with the specific facts and circumstances of your case.

Q5. GST/HST Backdating the Election for Nil Consideration

There is some uncertainty as to when the CRA will accept a late filed RC4616 to have the section 156 election accepted. Can you please provide some examples where it would be likely to have acceptance of this election after the due date, assuming that the parties have acted as though the election was in place and that the parties qualify to make the election?

Does CRA have a simple process for correcting returns filed where the registrant considered the section 156 election was in place but the request to back date has been refused?

Canada Revenue Agency (CRA) Response

In addition to the P&P described in the memo, the Durham office provided more specific examples/reasons for not accepting to back date the RC4616 election:

- If they are not eligible:
    - they do not meet the definition of closely related
    - there is no taxable supply
    - not majority use
    - they are not registered
- Previously denied in audit
- The account is under audit

As mentioned below, CRA normally accepts these when the registrant is eligible, compliant and there is some sort of evidence that the registrant has been applying these rules consistently. This evidence could be a note in the file that says election GST25 in use.

Q6. Retroactive GST/HST Registrations

Concerning the application for back dated registrations, we are finding that once the information has been submitted to the CRA, there is no communication provided, except maybe a standard form letter indicating that registration has been back dated and returns are outstanding for the periods indicated.

We are not always seeing confirmation on the application of late payment interest, the allowance of wash treatment of interest being allowed or verification that the submission was accepted as voluntary.

Can the CRA provide a number, other than Business Enquiries, that we can call to follow up on requested back dating for GST registration? Often the timing is crucial where statutory limits are involved and returns cannot be filed unless returns are expected by the CRA system.

Canada Revenue Agency (CRA) Response

A letter confirming the effective date of GST/HST registration is issued when the approved effective date differs from the date originally requested by the registrant. The purpose of the letter is to provide an explanation to the registrant as to why the effective date requested could not be approved. As the backdating of the effective date of a GST/GST registration results in the issuance of a notice to file outstanding returns and provides the period to which the returns relate, this is considered to serve as confirmation the backdating has been completed.

A registrant can follow-up on the status of their backdate request by contacting the Business Enquiries (BE) toll-free number. BE agents have access to the inventory system where these requests are tracked and are able to provide a registrant with an update and/or the expected processing timeframe. A process is in place to allow for the BE agents to address requests that are urgent in nature.

Furthermore, if a request is urgent in nature, it is recommended that registrants clearly identify this, along with the reason for the urgency and the date required when submitting their application.

Q7. Collections and rebates claimed on line 111

We are still having issues with CRA collection officers trying to force payment of Net Tax when there is a valid rebate sitting at CRA Summerside TC awaiting review. The registrant will not be required to pay the amount showing for the period unless the rebate is cancelled or substantially reduced and that is rarely the case.

Is it possible for the CRA to create an "area of excellence" that can act as the go-between for professionals who are trying to resolve the rebate review and a collections officer who is demanding payment? Perhaps there could be a marker attached to returns that are awaiting confirmation of an amount recorded on line 111 of the return?

Canada Revenue Agency (CRA) Response

The CRA’s Collections and Verification Branch currently has policy and procedures in place to address situations where the registrant files a GST/HST return with an amount owing and also files a GST/HST rebate application at the same time. Collections officers are instructed to validate the pending GST/HST rebate, and then only request payment for the amount due on the return less the pending rebate amount, if that amount was not paid upon filing. If the registrant remits the difference between the amount due on the return and the pending rebate amount upon filing the return, no payment would be requested.

We appreciate your suggestions to create an “area of excellence” or an indicator on the GST/HST returns when there is a related rebate application, and we may consider these ideas in the future. At this point, we will take the opportunity to remind collections officers of the offset provisions under subsection 228(6) of the *Excise Tax Act* and emphasize our related collections policy and procedure.

Q8. Use of wire transfer to pay CRA

Nonresident persons are allowed to pay the CRA using a wire transfer directly to the CRA bank. Is there any reason why a Canadian-resident business cannot use the same process?

Canada Revenue Agency (CRA) Response

Canadians have many payment methods at their disposal including; cheque, pre-authorized debit, MyPayment, online portals, and paying in person at a Financial Institution; however, since non-residents do not have access to the same variety of payment channels, the CRA has worked in conjunction with PSPC (aka Public Services and Procurement Canada) and Scotiabank to allow wire transfers for non-residents.

Furthermore, all payment channels represent a certain cost of doing business. Given the cost of wire transfers, the CRA and PSPC have agreed to allow them in a limited fashion to this one underserved segment. There are no plans at present to expand on wire transfer offerings, though the CRA does continue to explore new payment methods to offer Canadian individuals and businesses.

We appreciate any comments, suggestions or feedback in this area. Thank you for bringing forward the question.

Q9. Using the GST44 for the sale of exempt businesses

Can the CRA explain why a non-registrant selling a complete business to a single buyer would need to make an election under section 167 of the ETA (using form GST44)? It appears that the sale of all tangible and intangible personal property of a non-registrant would be exempt per section 141.1 of the ETA and since this election does not cover the sale of real property, there seems to be no instance where the election serves any purpose.

Canada Revenue Agency (CRA) Response

It is not clear why the point is made that “the election does not cover the sale of real property”. In some cases, real property may be relieved from tax where a section 167 election is filed. Since we do not know the detailed factual situation, we can only provide the following general comments.

Generally, two persons (other than a registrant supplier and non-registrant recipient) are eligible to make a joint election under paragraph 167(1)(b) of the ETA where:

1. the supplier is supplying a business or part of a business that was established or carried on by the supplier or that was established or carried on by another person and acquired by the supplier; and

2. under the agreement for the supply, the recipient is acquiring all or substantially all of the property such that the recipient is capable of carrying on the business or part as a business.

Also, where the conditions of section 167 are met, paragraph 167(1)(a) of the ETA deems, in part, the supplier to have made a separate supply of each property and service that is supplied under the agreement for the supply of the business.

Although the section 167 election is generally available to a non-registrant, there are circumstances where an election may not be necessary.

Non-registrant has no commercial activity

An election may not be necessary if the conditions of paragraph 141.1(1)(b) are met. Under the provisions of that paragraph, the sale of personal property is generally not subject to GST/HST where the property was last acquired by the vendor exclusively (90% or more for a person that is not a financial institution, 100% for a financial institution) for use in activities that were not commercial activities and was not in fact used in commercial activities.

Paragraph 141.1(1)(b) does not include sales of real property. In cases where a non-registrant person engaged exclusively in exempt activities makes a supply of a business and taxable real property is included in the agreement for the supply, the person would, subject to section 167, be able to make an election in respect of the supply (including the real property) as long as the recipient is a registrant.

Non-registrant is a small supplier

A person that is a non-registrant and small supplier would not necessarily need to make a section 167 election in respect of the supply of a business since section 166 of the ETA provides relief to such persons from the requirement to collect GST/HST on most taxable supplies. However, section 166 does not provide relief for sales of:

a) real property

b) personal property by a municipality that is capital property of the municipality, and

c) "designated municipal property" of a person designated to be a municipality for the purposes of section 259 of the ETA that is capital property of the person.

Again, if a non-registrant small supplier makes a supply of a business and taxable real property is included in the agreement for the supply, the non-registrant would, subject to section 167, be able to make an election in respect of the supply (including the real property) as long as the recipient is a registrant. Further, the supplies in (b) and (c) above may be similarly relieved where the conditions of section 167 are met.

Q10. Receivership and Bankruptcy and Super Priority

Consider the situation where: the CRA has a large outstanding deemed trust claim against a debtor as a result of outstanding GST claims and the CRA has sent a letter to the Receiver notifying the Receiver of its requirements under 266(2) of the ETA; and a receiver is appointed to dispose of assets on behalf of another creditor. Is it possible for the creditor to invert this priority by flipping the receivership into a bankruptcy at the conclusion of the sale of assets? Based on discussions with legal counsel at the CRA, we understand the

CRA's position to be that if such a notice is provided to a Receiver, the Receiver must respect the super priority of CRA despite the flipping of the proceedings into bankruptcy by the creditor.

Canada Revenue Agency (CRA) Response

The CRA's position in this type of scenario is that, upon the sale of the assets, the Crown's deemed trust attaches to the proceeds of the sale which are now in the possession of the secured creditor. The assets themselves are thus free from any further claim by the CRA. Further to this, the CRA contends that the deemed trust claim against the proceeds of the sale continues to exist despite any eventual bankruptcy proceeding which the debtor might experience before the CRA is able to recover such amounts from the secured creditor.

This position is currently was argued before the Federal Court of Appeal on January 19, 2017 by Louis L'Heureux of Justice in the case of HMQ v. Callidus Capital Corporation. In that case, the Federal Court determined the personal liability of a secured creditor does not survive bankruptcy as it is "not distinguished or identified as an exception in either s. 222(1.1) or 222(3) of the ETA or s. 67(2) and 67(3) of the BIA". The CRA's opposing position is that the liability of the secured creditor to pay the deemed trust property in its possession to the Crown "…constitutes a distinct and fully engaged cause of action against the secured creditor existing independently of the downstream fate of the trust". The Federal Court of Appeal has reserved it decision in that case and we are currently awaiting that decision.