2019 CPA Alberta Canada Revenue Agency (CRA) Tax Roundtable

The annual Canada Revenue Agency (CRA) Roundtable Meeting was held in May 2019. 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, 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.

Plenary Questions

Q1. Phone Service

The recent telephone service upgrade now results in all calls being answered with a lengthy series of automated questions, with the apparent purpose of directing calls to appropriate CRA agents. We appreciate the benefits of "triaging" calls in this manner when the caller is not familiar with the process, the CRA, or even the income tax system.

However, this has been noted as a source of frustration and wasted time by frequent callers, who must sit through this lengthy message each time they call in. Would the CRA consider enabling callers to bypass this message and proceed directly to an agent, perhaps by allowing a choice to be selected prior to hearing the entire message, rather than the old * key to connect with an agent? Alternatively, could tax advisors and representatives be provided with telephone numbers which would connect directly to the various choices to which they might otherwise be routed by the automated system?

Canada Revenue Agency (CRA) Response

In November and December of last year, CRA migrated its enquiries call centres to a new Hosted Contact Centre Service (HCCS) platform. We're seeing improvements with this new platform, in terms of accessibility and caller experience. For example, virtually all callers are now able to access our telephone services and decide to self-serve or wait to speak to an agent. Once in the agent queue, callers are able to decide, based on the Estimated Wait Time messaging, if they would like to wait or call back another time.

We have also introduced skills-based routing. This ensures calls are routed to the right agent faster, and also allows for a more focused training approach, aiming at higher accuracy of responses. However, callers can no longer directly reach the agent queue without going through the IVR menu.

We acknowledge this is a frustration point for some clients. As a result of feedback, we have streamlined the Individual Tax Enquiries (ITE) IVR menu to make it more user-friendly and reduce the time it takes to reach an agent. In fact, we have reduced the time it takes to reach an agent by over 20%, and are currently working to streamline the Benefits and Business Enquiries IVR's.

In addition, we have provided CPA Canada with an IVR Navigation Shortcuts Sheet, which will help users quickly and easily find their way to their intended destination without having to listen to the full IVR message.

Q2. Reassessments and Objections

a) In past Roundtables, and other forums with the CRA, it has often been asked that we communicate with the audit and assessment sections of CRA, rather than pursue an immediate objection to reassessments. We would ask that CRA comment on the recent *Ihama-Anthony* case 2018 TCC 262 in this regard. The taxpayer in that case made multiple attempts to provide information requested by the CRA, both before and after reassessment. He ultimately filed a Notice of Objection, which was rejected as it was past the deadlines. The Court had no choice but to dismiss the case, noting that (para 37):

> This is a distressing result because the evidence clearly established that on several occasions Mr. Ihama-Anthony sent to the CRA the documents which it had requested from him during the course of its audit, only to have those documents returned to him, without having been considered by the CRA. Had the CRA considered those documents before finalizing its audit, the results of the audit and the nature of the resultant reassessments may well have been more favorable from the perspective of Mr. Ihama-Anthony.

The Court also suggested (footnote 36) that a taxpayer relief application be considered by the taxpayer.

b) Given the results of the above, may we ask that CRA cease suggesting that taxpayers or their advisors delay filing Notices of Objection to reassessments?
c) Has the CRA reviewed the facts of this case to assess what went wrong, and how their systems might be improved to reduce the likelihood of similar issues in the future? If not, will they?
d) Would the CRA consider informing taxpayers whose appeal rights have expired of the option of a taxpayer relief request to revisit issues such as these?
e) Would the CRA consider a process under which a taxpayer might file a “protective” objection to preserve their appeal rights while continuing to communicate with the audit or assessing divisions in the hopes of resolving matters at a lower level?
f) Further to the above, can the CRA discuss what its current policy is on finalizing files without corresponding with the taxpayer or the taxpayer’s representative? We have noticed in some cases that CRA is not corresponding with the taxpayer for additional information and/or clarification resulting in certain claims being denied and notice of reassessments being issued based on the review done by the agent. Had the agent clarified some information with the taxpayer, this could be avoided. Instead, it results in the taxpayer filing a notice of objection which causes additional fees to the taxpayer. Filing an objection also creates additional work with the department which could be avoided.

Canada Revenue Agency (CRA) Response:

Part 1 Response: (a), (b)

The CRA audit programs inform taxpayers in writing of the recourse available to the taxpayer where a notice of assessment will be issued to the taxpayer as a result of an audit. This information explains that the taxpayer can file an objection within 90 days from the date on the notice of reassessment and refers the taxpayer to Pamphlet P148, Resolving Your dispute: Objection and appeal rights under the *Income Tax Act*, https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/p148.html, for further information.

Part 2 Response: (d), (e)

As always, it is in the best interest of the taxpayer to resolve their issue with the CRA at the earliest opportunity, which often means dealing directly with the assessing/auditing area, while recognizing that they always have the right to file an objection.

The CRA is of the view that the redesign of its objections and appeals Canada.ca web pages will enable the CRA to provide better service and information to taxpayers. These web pages have objections decision tools which were developed to provide taxpayers with awareness of other possible recourse options prior to filing an objection. Depending on their responses to the questions in the decision tool, the taxpayer is provided with the recourse options; if the taxpayer was dealing with CRA's Audit Division, they received a notice of reassessment, and they did not provide all of the information that they were asked for, they have to file an objection for the CRA to review their claim.

The Filing an Objection web page also provides information on deadlines for filing a Notice of Objection. The conditions as well as the deadlines for applying for an extension of time to file an objection are also indicated. If a taxpayer did not file an objection on time because they were in discussions with other areas of the Agency to try to resolve their issue, the Appeals Branch will consider that they had a bona fide intention to object, and may grant the extension of time, as long as the other conditions are met.

The links to these new web pages and tools can be found at the following links:

- Complaints, objections, appeals, disputes and relief measures
- Income Tax objections decision tool
- GST/HST Objections decision tool
- Filing an objection-Income tax webpage
- Filing an objection –GST/HST webpage

The CRA will be looking into ways to enhance our communications to include the option to invoke subsections 152(4) or (4.2) of the ITA when the situation merits. In the meantime, taxpayers can reference paragraph 73.1 of IC07-1R1, Taxpayer Relief Provisions:

https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/ic07-1r1/taxpayer-relief-provisions-1r1.html.

Part 3 Response: (f)

The case identified above was completed by the Office Audit program, which conducts compliance activities of taxpayers' returns at distance. The program makes every effort to reach the taxpayer and/or their representative. These efforts include: letters, registered mail, phone calls at different moments of the day, and phone calls to the representative.

The current procedures state: "If the taxpayer fails to respond within the time frame for reply, the reassessment may be processed. However, the auditor should contact the taxpayer to ensure that a response is not in the mail or to determine if the taxpayer needs more time to complete their response to the proposal letter."

However, as result of this court case, we are reviewing our audit procedures manual to ensure that it is clear our auditors understand that contact with taxpayers or their representative prior to finalizing the audit is a mandatory step. That said, there are instances where our auditors are unable to reach taxpayers or their representatives, despite making every effort to do so.

Q3. Obtaining Online Access to Business Account Information

We are finding that a significant percentage of authorizations transmitted using T2 software are being rejected. Often, the CRA diagnostic states only that the name of the authorizing person (usually a corporate director) does not match what is in the CRA system. This does not provide sufficient information to determine the appropriate means to resolve the problem.

Would the CRA consider modifying its algorithm slightly so that, for example, if the last name of a director is correct, the request is flagged for review by an agent? This might permit acceptance where the variation is presence or absence of a middle initial, or a derivative of a first name, where the surname is correct. Alternatively, the representative could be contacted to request a copy of the company's latest Annual Return, showing the names of all of the directors, so that the CRA can update its records to match.

It would be ideal if this supplemental information could be filed electronically, perhaps with the authorization request as a proactive measure. A third alternative would be a "help desk" (perhaps an expansion of the EFILE help desk) which might assist in resolving these matters.

Canada Revenue Agency (CRA) Response

There are now two EFILE business authorization options available, depending upon whether one uses T1 or T2 software. Like all other secure CRA electronic services, these also have front-end validations to ensure that accurate information is being provided by the user to help ensure confidentiality, but also to avoid delays that are associated with having to communicate with users after the original submission (which is a constant problem and additional cost associated with paper). The CRA is always faced with the challenge of providing the best possible client experience while safeguarding the integrity and confidentiality of taxpayer information.

We are aware that the issue of matching the business owner name can be a challenge for users of our services, even though the system allows users to make several attempts to transmit the exact name and/or spelling that we have in our database. What users must also understand is that until the CRA can successfully process an authorization request, it is unlawful for the Agency to provide ANY client information to (the unauthorized) third-party representatives, including whether a name is not on file or even misspelled.

Still, to try to assist in resolving these types of challenges, the CRA's telephone agents have been given additional guidance on how they may steer the conversation to assist users of these services who may find themselves in these types of situations. For example, without providing actual details on the account, they could suggest to the (unauthorized) caller that they might want to consider the possibility that a middle initial may be present, or that someone's given name may be abbreviated (e.g., Rob for Robert). We also suggest that any CRA correspondence that may have the person's name should be verified to ensure proper spelling. At the end of the day, however, it remains the business' responsibility to ensure the accuracy and consistency of any identification information being stored in any CRA database or in the corporate registries that we usually rely upon.

If all else fails, we would then suggest that the representative use the Represent a Client (RaC) authorization service instead. The RaC authorization service allows the user to indicate that the name being provided doesn't match what we have on record, and to upload e-documentation to support the new 'owner' name (and the spelling) that is being used at the time of submission. To do this, the user will simply open an Authorization Request and (under Add Authorization Information) select "an owner update is required" at the bottom of the page under "This request is certified by…"

Q4. Postal Dates

Pursuant to section 26 and the definition of "holiday" in subsection 35(1) of the *Interpretation Act* (and in conjunction with most provinces' legislation), when a due date falls on a Saturday, a Sunday, or a public holiday, a return is considered on time if it is postmarked on the next business day.

Further to the above and pursuant to subsection 248(7), "…*anything….sent by first class mail or its equivalent shall be deemed to be received by the person to whom it was sent on the day it was mailed*…". When a return is delivered to CRA by Canada Post through its Expedited Parcel service, is that service considered first class mail's "equivalent"? Accordingly, what day is considered by CRA to be the day that the return was received: the purchase date, the initial item process date or the delivered date?

Canada Revenue Agency (CRA) Response

The CRA considers the received date to be the mailroom date (delivered date) minus five days leniency. The CRA strongly encourages the use of electronic filing via certified T2 software. It provides you with an easy-to-use, convenient (no holiday restrictions), secure, and confidential option for filing your corporation income tax return. Corporation Internet Filing streamlines the tax filing process, provides the filer with an immediate confirmation of receipt, and results in faster refunds.

Q5. Independent Verification of Income

We understand that, as part of the implementation of risk-based auditing of small and medium enterprises (SMEs), the CRA requires independent verification of income (IVI) procedures be undertaken in most, if not all, SME audits. This has surprised many taxpayers and representatives, particularly where the business records are believed to be accurate and well-maintained.

a) Is our understanding that such procedures are required in all SME audits? If not, can the CRA advise on the means by which the need for such procedures is determined, and what proportion of audits include such procedures?
b) Has the CRA formally assessed the costs and benefits of these procedures, now that they have been applied for several years?
c) Can the CRA comment, either from such a review or otherwise, on the results of these procedures? We would be interested in the approximate proportion of taxpayers where these procedures discover unreported income, and the extent of such income discovered to date.
d) Will these procedures continue to be applied in all audits, or will the CRA fine-tune their application based on the results experienced to date?
e) Will Publication RC4188, *What You Should Know About Audits* be updated to include this aspect of CRA audits? Assuming our understanding that such procedures are a standard part of most, if not all, audits, it seems reasonable to communicate this so taxpayers, and their representatives, can be prepared for these procedures.

Canada Revenue Agency (CRA) Response

No response given.

Q6. Corporate Tax Refunds and GST Owing

Our members continue to experience issues where a corporate tax return and GST return are filed in close proximity. Where there is a refund on one return, and a balance payable on the other, it appears that the refund is automatically applied to pay the outstanding balance, regardless of any requested application on the taxpayers' return. When the taxpayer's payment is received, it is processed as an installment for the subsequent year. This causes confusion, administrative costs in determining how the returns were processed, and/or cash flow issues for the taxpayer.

Can the CRA advise how the taxpayer might ensure that CRA issues the expected refund and applies the payment as intended by the taxpayer? If this is not possible under current filing mechanisms, would the CRA consider changes to facilitate honouring the payment arrangements of compliant taxpayers? Possibilities might include the following:

a) Expanding the choices for direction of a refund to include "apply refund to other balances" so that it is clear the taxpayer wishes the refund be issued;
b) Adding choices related to balances payable such as "transfer refunds from other accounts" or "payment will follow by due date", or perhaps entry of a specific date;
c) Contacting the client prior to applying refunds on one account to a different account;
d) Delaying the transfer for a reasonable period after assessment, sufficient to permit a payment sent by mail to be received and processed by the CRA.

We appreciate that the CRA will not be able to identify specific changes at the Roundtable; however, an indication of how taxpayers can better direct their refunds, and/or that the CRA recognizes the problem and is reviewing possible solutions, would be greatly appreciated.

Canada Revenue Agency (CRA) Response

We are required to offset a credit balance arising on any business account to a debt existing on any other program account for the same business as stipulated in the various acts that the CRA administers. This type of transfer was automated to ensure that both the taxpayer and CRA benefit from the efficiency that an automated transfer system provides.

However, we recognize that, as outlined in your submission, problems can arise when business returns are filed in close proximity in time to one another and an overpayment on one is automatically transferred to the debt assessed on another even though the corporation has submitted a payment that CRA is yet to process.

Even though there is a box to tick on the Corporate Income Tax return should you wish to transfer any excess credit to the next fiscal year as an instalment, this does not stop the automatic offset from happening if there is a debt in another program account for the same corporation.

If a payment is not applied as intended, the corporation can request a transfer of the payment to the correct period or account by using "My Business Account" or by calling Business Enquiries. We are always looking for ways to improve our processes and better

serve Canadians. We will take your suggestions into consideration for future system enhancements.

Income Tax Questions

Q1. Automobile Expenses Project

We understand that CRA will be reviewing automobile expenses more closely this year. Can the CRA confirm our understanding?

A few years back professional fees expenses were closely reviewed. This was fairly easy to provide the requested information. However, with automobile expenses provision of information could be far more onerous. If a corporation has even a few vehicles on the road, there could literally be hundreds of expenditures for items such as fuel. We understand the statutory need to keep proper records. However, what level of detail and form can practitioners expect CRA to request regarding automobile expense documentation?

Canada Revenue Agency (CRA) Response

We regularly do reviews as part of the self-assessment tax system. Our limited reviews consists of selecting accounts for the verification of specific lines of the T2 return(s), and then requesting documentation from taxpayer (or their representative) to confirm if we have correctly assessed the return(s).

Our contact letter may request the following or similar documentation to support the vehicle expenses reported on the T2:

- Detailed list or ledger of the transactions included in vehicle expenses.
- Sample of receipts for expenditure such as maintenance, repairs and fuel
- Ownership of the vehicles
- Proof of business /personal use
- Log book

Q2. Limited Review of Corporate Tax Returns

Can the CRA share information on the results of the following review projects, including the frequency of adjustments, and common errors or issues noted:

a) Professional fees
b) Travel expenses
c) Class 10 additions
d) Automobile expenses
e) Small Business Deduction claims (which appeared to focus on the real estate sector)

Would the CRA consider posting such information, including areas where taxpayers commonly make errors, on their website?

Canada Revenue Agency (CRA) Response

Here are some common mistakes that we see when conducting limited reviews on corporate tax returns:

- Incomplete information and documents
- Misunderstandings of what is personal rather than business expenses
- Incorrectly claimed deductions and credits
- Expenditures that should be capitalized, and
- Misclassification of income

Over the last three years, 40% of our reviews result in reassessments, although this can differ amongst the various types and topics of reviews.

In the near future, information about the Corporation Assessing Review Program's limited reviews will be posted on CRA's website, including a recording of our recent webinar.

Q3. Business and Property Income

The CRA has issued a variety numerous favorable rulings related to post-mortem pipeline transactions, some of which (for example, 2014-0548621R3) accept that the business of the corporation is investment in portfolio securities. With the expansion of the Tax on Split Income provisions, the CRA has commented on several occasions (for example, 2018-0778661C6) that the determination of whether a taxpayer is engaged in a business, the purpose of which is to derive income from property, or is simply earning income from property requires a review of all relevant facts and circumstances. This has also been reiterated in the context of eligibility for the small business deduction (for example, in 2018-0768881C6).

The definition of "business" in subsection 248(1) is very broad, including "an undertaking of any kind," which we suggest supports the CRA's views. We have certain questions in this regard:

a) What factors does the CRA consider to be the most relevant in differentiating property income from a business which derives its income from property? Do these vary depending on the type of activity (e.g., real estate rental versus portfolio securities)?
b) Would the CRA consider it most common for these activities to be businesses (especially given the inclusion of an "undertaking of any kind"), with only income earned with very minor levels of activity to be "a business"?
c) What level of activity would be required for an individual to be "actively engaged on a regular basis" (as that term applies in the definition of a related business)?
d) What level of activity would be required for an individual to be "actively engaged on a regular, continuous and substantial basis" (as that term applies in the definition of an excluded business)?
e) Does the CRA accept that the definition of "business" applies for all taxpayers? For example, does the CRA accept that an individual may be carrying on the business of investing in portfolio securities, such that any income earned on funds advanced from a spouse would not be subject to the attribution rules, which apply only to income from property?

Canada Revenue Agency (CRA) Response

Thank you for your question. Our current policy to address specific technical questions is through national organizations with a national or international focus, such as CPA Canada. In the alternative, you may request a technical interpretation through the Income Tax Rulings Directorate.

Q4. Continuing Business

In the Tax Court decision of *Tournier* 2018 TCC 229, the Court held that a retired lawyer who was still incurring costs related to the former practice of law was still carrying on the business of practicing law, such that these costs were deductible. Does the CRA accept that while expenses which trace back to the business continue, the business owner is still carrying on the business? Where a corporation is incurring such costs in respect of the former practice of accounting, dentistry, a chiropractor, law, medicine or a veterinarian, would the CRA consider that corporation to continue to be a professional corporation (relevant, for example, for purposes of the excluded shares exception from the tax on split income)?

Canada Revenue Agency (CRA) Response

Thank you for your question. Our current policy to address specific technical questions is through national organizations with a national or international focus, such as CPA Canada. In the alternative, you may request a technical interpretation through the Income Tax Rulings Directorate.

Q5. Tax on Split Income – Excluded Shares

Assume that Opco, a Canadian controlled private corporation, generates all of its business income from sources other than services, and no income directly or indirectly from any related business. It is not a professional corporation. Its sole shareholder, Mr. A, undertakes an estate freeze, converting his common shares to redeemable preferred shares. Opco issues new voting common shares 20% to each of Mr. A, Mrs. A (his spouse) and Mr. A's three children, B (age 25), C (age 23) and D (age 17). Mr. A then transfers 10% of his preferred shares to each of Mrs. A (on a rollover basis pursuant to subsection 73(1)), B, C and D (resulting in deemed dispositions at fair market value pursuant to Subsection 69(1)(c).

a) Would the CRA agree that dividends paid to Mrs. A, or to B, from Opco will be dividends on excluded shares (as they each own 20% of the votes, and at least 10% of the value, of Opco's shares), and therefore exempt from TOSI? These dividends are paid on their common shares, and not the preferred shares (which, in Mrs. A's case, would be subject to attribution).
b) Would the CRA further agree that dividends paid to C and D will, if paid in or after the year they each turn 24 years of age, will also be paid on excluded shares, and similarly exempt from TOSI?

c) Can the CRA provide its comments on determining a "reasonable return" on property contributed directly or indirectly and risks assumed by an individual?

Canada Revenue Agency (CRA) Response

Thank you for your question. Our current policy to address specific technical questions is through national organizations with a national or international focus, such as CPA Canada. In the alternative, you may request a technical interpretation through the Income Tax Rulings Directorate.

Q6. Tax on Split Income – Business Sale

For individuals age eighteen or over, income which is not derived directly or indirectly from a related business in respect of the individual is an excluded amount (subparagraph (e)(i) of the definition of that term in subsection 120.4(1)). Where the individual receives a dividend from a corporation which, in the past, carried on a related business, but did not do so during the year, would the dividend be an excluded amount under this provision where:

a) the business ceased in a prior year, and is no longer operated by anyone?
b) the business was sold to unrelated parties in a prior year and is still active, but no source individual in respect of the dividend recipient was active in the business in the year of the dividend?
c) the business was sold to unrelated parties in a prior year and is still active, but a source individual in respect of the dividend recipient was active in the business in the year of the dividend (for example, a former owner related to the individual is employed by the new owners in the business, perhaps for a transitional period)?

Canada Revenue Agency (CRA) Response

Thank you for your question. Our current policy to address specific technical questions is through national organizations with a national or international focus, such as CPA Canada. In the alternative, you may request a technical interpretation through the Income Tax Rulings Directorate.

Q7. Series of Transactions

Technical Interpretation 2018-072501E5 reviewed a series of transactions to transfer corporate real estate to a separate corporation. At the time these transactions were being undertaken, one shareholder (Cco) sold their interest in the corporate group. CRA opined that, although the deemed dividends arising from the restructuring transactions did not reduce the capital gains on any shares sold by Cco, they did reduce the capital gains on other shares. As such, subsection 55(2) would apply to dividends paid as part of the restructuring transactions if the share sale were part of the same series of transactions.

CRA also noted that the determination of which transactions were part of the series was a question of fact. It appeared that the person asking the question believed they were, so the document focused on the income tax results under that assumption. It appeared possible,

however, that the restructuring was separate from the share sale (neither appeared contingent upon the other, nor was there any indication of transactions that related to both).

a) What factors would the CRA typically review to assess whether certain transactions are part of the same series?
b) How important is the sole factor that transactions were carried out at, or around, the same time? In other words, can CRA confirm that transactions such as the share sale and corporate restructuring noted above occurred at approximately the same time does not mean, in and of itself, that they were both part of the same series of transactions?

Canada Revenue Agency (CRA) Response

As ``Series of transactions`` is not defined in the *Act*, we reference Subsection 248(10) which states:

> "... For the purposes of this act, where there is a reference to a series of transactions or events, the series shall be deemed to include any related transactions or events completed in contemplation of the series…"

The factors CRA would typically review are:

a) Must be a series within the common law meaning.
b) Transactions related to that series.
c) Completion of the transaction must be in contemplation of that series.

Per (SCC) Copthorne Holdings Ltd v The Queen (Docket: 33283) para 56:

> ``… The fact the language of s. 248(10) allows either prospective or retrospective connection of a related transaction to a common law series and that such an interpretation accords with the Parliamentary purpose, impels me to conclude that this interpretation should be preferred to the interpretation advanced by Copthorne…``

The text and content of s. 248(10) have left open when the contemplation of the series must take place as nothing in the text specifies when the related transaction must be completed in relation to the series.

Therefore, it is elaborated that "in contemplation" is not read in the sense of actual knowledge, but in the broader sense of "because of" or "in relation to" the series. Therefore, this can be applied to events either before, or after a specific transaction.

Therefore, the sole factor of transactions occurring at the same time is not necessarily a deciding factor either way. The transactions are reviewed in the context of the transaction identified and used to apply to the specific section of the act, in this case subsection 55(2).

We can neither confirm nor refute that the transactions such as the share sale and corporate restructuring noted above occurred at approximately the same time does not mean, in and of itself, that they were not part of the same series of transactions based on the information provided. In respect of the particular scenario described, the determination is fact driven and

a general answer would not be appropriate.

Q8. Dental Students

Dental students incur substantial expenses for both their text books and their "Dental Kit" while they are completing their dental training. Their dental kit is largely made up of instruments needed to practice and for practicing dentists, these items would generally be included in Class 8 or 12. Would the CRA accept the historical cost of the Dental Kit being a capital cost or deductible expense when the dental students have later graduated and are practicing?

Canada Revenue Agency (CRA) Response

Thank you for your question. Our current policy to address specific technical questions is through national organizations with a national or international focus, such as CPA Canada. In the alternative, you may request a technical interpretation through the Income Tax Rulings Directorate.

Q9. Legalization of Cannabis

a) Does the legalization of cannabis change CRA's interpretation of the availability of a medical expense tax credit for medicinal marihuana? We note there has been no change proposed to the Income Tax Act in this regard.
b) Would the CRA consider costs incurred for marihuana to be fully deductible, assuming it is smoked and not eaten? It is not a food or beverage for human consumption.

Canada Revenue Agency (CRA) Response

The medical expense tax credit is a non-refundable tax credit that can be used to reduce the tax paid or payable. Eligible medical expenses paid in any twelve month period ending in 2018 can be claimed as long as they have not been claimed by anyone in 2017.

Under proposed changes, the amounts paid for marihuana, marihuana plants or seeds, cannabis or cannabis oil for a person authorized to possess these substances for their own medical use, under the *Access to Cannabis for Medical Purposes Regulations* or section 56 of the *Controlled Drugs and Substances Act* are amounts that can be claimed as medical expenses. These substances must also be purchased in accordance with the *Access to Cannabis for Medical Purposes Regulations* or section 56 of the *Controlled Drugs and Substances Act.*

Here's where we found the information….

(Legislative reference paragraph 118.2(2)(u) of the Income Tax Act)

Also Income Tax Ruling 2015-0588751E5, in part, states the Canada Revenue Agency will not disallow eligible medical expenses claimed for the purchase of medical marihuana allowable under the new regulations.

In addition, Income Tax Ruling 2017-0700781E5 states, in part, pursuant to paragraph 118.2(2)(u) of the Act, if a patient is authorized to possess marihuana, marihuana plants or seeds, cannabis or cannabis oil for their own medical use under the Access to Cannabis for Medical Purposes Regulations (ACMPR) or section 56 of the Controlled Drugs and Substances Act (CDSA), the cost of marihuana, marihuana plants or seeds, cannabis or cannabis oil purchased in accordance with the ACMPR or section 56 of the CDSA qualifies as a medical expense for purposes of the METC. The marihuana, marihuana plants or seeds, cannabis or cannabis oil must have been purchased on or after August 24, 2016 to qualify.

Q10. Rectification

In the 5551928 Manitoba Ltd. case (2018 BCSC 1482), the Court permitted a capital dividend to be reduced to the amount of the Capital Dividend Account (CDA) available, under rectification. We note that, in that case, it was clear that the intention was to distribute the entire CDA, and the excess resulted from an error by the professional advisors in determining that amount. We also note the CRA indicated they would not oppose a rescission of the capital dividend.

a) Does the CRA accept the results of this case? Will they oppose applications for rectifications under similar circumstances?
b) If so, what documentation would the CRA expect to see to demonstrate similar facts? Can the CRA comment on the situations where they would, or would not, oppose rescission?
c) Is it the CRA's policy not to oppose rescission of excessive capital dividends? Can the CRA comment on the situations where they would, or would not, oppose rescission?

Canada Revenue Agency (CRA) Response

As this case is currently under Appeal, we reserve comment at this time.

Q11. Employee Benefits

Folio S2-F3-C2 has now been absent from the CRA website for well over a year, since October 11, 2017. We recognize the significant controversy over some of its contents, specifically merchandise discounts. However, there is a lot of valuable information in that folio (from those who had the opportunity to peruse it when it was online). Would it be possible to restore it with certain sections labelled "under review – to be added at a later date" so that the significant information lacking the same controversy might be made available?

Canada Revenue Agency (CRA) Response

The entire Income Tax Folio referenced remains under review; in the meantime, much of the information contained in the folio can still be found on our website at https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/payroll/benefits-allowances.html, or in Guide T4130, Employers' Guide – Taxable Benefits and Allowances.

Q12. Cumulative Eligible Capital (CEC)

Although eliminated effective January 1, 2017, the transition rules will remain relevant for decades to come. Would the CRA please consider transitioning the Department of Finance technical notes, which included many useful examples of the application of these rules, to the CRA website where they will be available to the average taxpayer and their advisors (who do not tend to seek out tax guidance in historical draft legislation)?

Canada Revenue Agency (CRA) Response

At this time there are no plans to put the Department of Finance Technical Notes on the CRA website.

Q13. Regular Workplaces

It is increasingly common for employees to work from multiple workplaces. CRA has been challenging deductions for travel to or from regular workplaces, regardless of distance, allowing only travel between different workplaces during a single day. While we understand that the commute is a personal expense, employees required to regularly report for work in locations separated by substantial distances are forced to incur substantial travel costs. Consider, for example, an employee who, in some parts of the year, must report for work at an office in Edmonton, and at other times works at an office in Ottawa. Neither location is a special work site as work at both locations will continue throughout the person's employment.

a) Does the CRA permit deductions for travel costs of this nature where they are required due to the nature of employment?
b) Would the CRA consider reasonable allowances paid for such travel by the employer to be taxable benefits?
c) Would the CRA consider direct reimbursement of actual travel and accommodation costs to be taxable benefits?

Canada Revenue Agency (CRA) Response Part a):

Commuting costs are not deductible, no matter how far the employee lives from the place of employment. The deduction of travel costs is a question of fact. Every situation would be assessed on its merits (case by case basis).

Form T2200 Declaration of Employment and Form T777 Statement of Employment Expenses must be filled by the employer.

For a specific response to the scenario provided in this question, please apply for a ruling.

Canada Revenue Agency (CRA) Response Part b):
Whether an allowance for travel expenses is reasonable is a question of fact. You should compare the reasonable costs for travel expenses that you would expect your employee to incur against the allowance you pay to the employee for the trip. If the travel allowance is reasonable, you do not have to include it in your employee's income. If it is not reasonable, the allowance has to be included in your employee's income. For more information, see paragraph 48 in Interpretation Bulletin IT522R, Vehicle, Travel and Sales Expenses of Employees. If the allowance is taxable, it is also pensionable and insurable. Deduct income tax, CPP contributions, and EI premiums. Report the taxable allowance in box 14 "Employment income" and in the "Other information" area under code 40 at the bottom of the T4 slip. For more information, see T4 – Information for employers.

Canada Revenue Agency (CRA) Response Part c):
Whether the re-imbursement of the travel expenses and accommodation costs is a taxable benefit is a question of fact. If the amount is reasonable it is not a taxable benefit (please see Step b.), otherwise it is a taxable benefit.

Canada Revenue Agency (CRA) Overall Response:
Employees who are required by their employment contract to pay their own travel expenses may deduct under paragraph 8(1)(h) if they meet the following conditions:

- They are ordinarily required to carry on their duties of employment away from the employer's place of business or in different places;
- They did not receive a travel allowance that was not included in their income because of subparagraph 6(1)(b)(v), (vi) or (vii);
- No deduction was claimed under paragraph 8(i)(e)

The deduction for meals under paragraph 8(1)(h) is restricted to personal meals consumed while travelling and is only allowed where the employee is away from the municipality/metropolitan area for a minimum of 12 hours. All meal costs are restricted by subsection 67.1(1) to 50% of the actual cost. Travel is interpreted strictly and does not include promotion, advertising, entertainment and similar expenses.

While paragraph 8(1)(h) refers to an employment contract, this need not be written contract. Further, the employee is required to "ordinarily" carry on his employment duties away from the employer's place of business, which means that it may not be incidental or occasional.

Q14. Specified Partnership Income

The form to be used for assigning the Specified Partnership Business Limit from a partner to a designated member appears to be T2 Schedule 7. Are partners who are not corporations (for example, an individual) expected to file a corporate Schedule 7 for such assignments? If not, how should such assignments be filed with the CRA?

Background (clarification provided by CPA Alberta):
The question is how a non-corporate partner is expected to assign their SPBL to a specified member. Assume that I, personally, am a 20% partner in a partnership. I have a $100,000 SPBL.

I want to assign that to my wife's corporation, Wifeco. Wifeco provides IT services to the partnership, and has $125,000 of income from that source (and $350,000 from numerous other clients). In order for Wifeco to get access to the SBD, I personally must assign my SPBL. I am permitted to do so, electively.

Am I expected to file a corporate Schedule 7 to do so? What should I reflect as my business number? As an individual, I do not have a BIN. How do I file a corporate Schedule 7 with my T1 Personal Tax Return? Presumably, I will have to file it in paper form. Where do I send it at CRA?

If a non-corporate partner is not expected to file a corporate schedule 7, how are they expected to elect a transfer of their SPBL? What is the process? Where does CRA spell out this process so a businessperson, or their advisor, can complete the required filings?

In a nutshell, the Schedule 7 provides the process by which a corporate partner, with their corporate tax return, assigns SPBL under Subsection 125(8). But any person who is a partner – not just a corporation – is permitted to make such an assignment. How does a partner who is not a corporation make the assignment? They are required to file a prescribed form with the Minister under the Act, but it is not clear what form is prescribed for a partner who is not a corporation. The instructions to Schedule 7 presume the filer is a corporation, and there is no guidance of which I am aware for a non-corporate partner wishing to make an assignment of this nature.

Canada Revenue Agency (CRA) Response

Under paragraph 125(8)(c), the designated member in receipt of the assignment and the person making the assignment are both required to file a prescribed form with their income tax return for the taxation year. The prescribed form for paragraph 124(8)(c) is T2 Schedule 7 *Aggregate Investment Income and Income Eligible for the Small Business Deduction (2019 and later tax years)*, Part 4, Tables 2 and 3.

The author is correct that when the person making the assignment is an individual, no such equivalent T1 form exists. In these circumstances, the CRA will accept either a letter from the taxpayer which provides the same information required in Part 4, Tables 2 and 3 of the T2 Schedule 7, or a copy of the T2 Schedule 7 with Part 4 Tables 2 and 3 completed.

The amount allocated is included in Part 4 – Specified partnership income - Table 2 on Schedule 7 for the recipient of the assignment (or designated member), on Wifeco's T2 Corporation Income Tax Return.

The partnership name, name of the member and social insurance number of the individual member of the partnership is entered in Columns 405, 406 and 411, respectively of Schedule 7.

Note that all requirements must be met under the ITA to be considered a designated member for the purpose of the assignment and similarly for the allocation of the business limit from the partnership and those requirements have not been considered in the response.

Notice to presenter in case of follow up questions:
We agree this is problematic. The issue will be considered further and discussed with our Publications staff in HQ.

If questions are asked concerning electronic filing we can advise that the individual member can keep a hard copy on file, available upon our request if necessary.

Q15. Evidence of US Foreign Tax Paid for Personal Tax Processing Reviews

In situations where an individual has claimed foreign tax credits based upon US federal and state income tax paid, T1 Processing review letters request an "Account Transcript" from the IRS and a similar document from the state tax authorities if a state tax return was required. The letters also state that if the taxpayer is unable to send a statement or transcript proof of payment made to the foreign tax authority will be accepted. The IRS transcript system often is not as timely as advertised on the IRS website; while a transcript should be received by mail within 10 days, outside the US mailing time can extend a few weeks past that, and if the taxpayer cannot access a transcript thru the IRS website, requests faxed in appear to take longer as well.

However, despite the statement that proof of payment will be accepted, practitioners are experiencing many foreign tax credits denied on the basis no IRS transcript was received. A transcript faxed subsequent to the original processing review response often is not considered, either.

Can the CRA provide comments on situations like that described and provide any updates, if any, on the processing of individual foreign tax credits in situations where US tax is paid?

Canada Revenue Agency (CRA) Response

Thank you for your question. Our current policy to address specific technical questions is through national organizations with a national or international focus, such as CPA Canada. In the alternative, you may request a technical interpretation through the Income Tax Rulings Directorate.

Q16. Direct Access to CRA Senior Agents

The Dedicated Telephone Service (DTS) Pilot Program was expanded to a much broader participant group - across Canada, for all tax preparation organizations of up to 50 partners – in early 2019.

Can the CRA provide some preliminary comments on the success of this expansion, and what we may expect to see in the future? We appreciate that the Roundtable will take place shortly after the personal tax filing season, so that the CRA may not have had the opportunity to formally review the program. Perhaps a preliminary discussion at the Roundtable might be followed by a more robust written response from any more detailed review of the program. We also anticipate that some of our members at the Roundtable will have participated, and may be able to offer some comments to CRA on how the program worked from their perspective.

The DTS provides technical assistance on tax matters, expected to be helpful to many tax preparers. However, many issues where representatives need to communicate with the CRA involve specific accounts, and not the general interpretation of legislation. Calling the general inquiry line and getting a complex tax issue escalated up to a more experienced officer continues to be a time-consuming, frustrating exercise for CPAs. We suspect this is equally the case for the CRA representative receiving the call. Is the CRA considering providing a similar service which would focus on client-specific issues? We understand that the IRS has had a system (Practitioners' Gate) in place for several years. Perhaps the CRA could communicate with the IRS regarding the successes and challenges of that system.

Canada Revenue Agency (CRA) Response

The CRA offers Canadians and their representatives' information through various channels. Clients can call the general enquiries line with their tax enquiries. There is an escalation process in place for more complex enquiries received through the phones. The CRA is also making improvements, such as using skill-based routing and enhanced automated telephone services, to improve the callers' experience.

We appreciate receiving your feedback regarding the IRS's Practitioners' Gate service. The CRA will look into the process for tax practitioners' enquiries to evaluate if there are elements that can be applied.

Q17. Turnaround Times

Prior Roundtables have discussed the processing times for a variety of filings where service standards seem not to be met. Can the CRA provide an update regarding current processing times, actions being taken to address delays, and projections of future turnaround times for the following:

a) T1 adjustments - we note that the published service standard (2 weeks for electronically filed adjustments and 8 weeks for paper filed adjustments) was met only 64% of the time, rather than the targeted 95%, in the 2017-2018 year.

Canada Revenue Agency (CRA) Part a) Response:
To provide greater transparency to the taxpayer, paper and electronic standards have been separated. 2018-19 represents the baseline year for the new standards.

Various modernization initiatives contributed to the target not being met. Results are expected to improve for the next fiscal. Our latest statistics for Q4 2018-19 fiscal year indicates for paper filed adjustments, we met the target 83% of the time. For electronically filed adjustments, we met the target 87% of the time.

b) T1 pre- and post-assessment reviews – members report processing times of two to four months. . There does not appear to be a published service standard. Members find it challenging to explain to clients why they are given a 30 day deadline when processing times are so lengthy.
c) Certificates of Compliance (Form T2062 and similar), where it seems two months or more is typical for even relatively simple matters. Again, there does not appear to be a published service standard.
d) Related to (c), above, it appears that requests for a comfort letter are often overlooked. As well, many purchasers often do not want to risk any concerns arising and will remit the entire 25% /50% of proceeds required under the Act if a certificate is not available at payout, even with a comfort letter or other evidence of a reduction in tax. We are concerned that the recent Kau decision (2014-1304(IT)G) will create even greater concerns by property purchasers and their advisors. Would the CRA consider adding a discussion of comfort letters to their website, and possibly adding a request for same to the T2062 and similar forms to better educate those involved as to this process, and formalize the request process?

Subsequent to the Auditor General's comments of turnaround of Notices of Objection, the CRA implemented a web page which is regularly updated to reflect turnaround currently being experienced. This is very helpful in setting expectations, and assessing when it is time to follow up on these filings. Would the CRA consider a similar approach for other common filings?

Canada Revenue Agency (CRA) Part a) Response:
No response provided to the other questions.

Q18. T1 Adjustments Process

a) At present, there is no mechanism in place to electronically submit information in support of a T1 adjustment request in conjunction with filing the request itself. Does the CRA have any plans to add such functionality and, if so, can they share the timeline for this service enhancement?
b) We continue to see situations where CRA staff do not follow up on T1 adjustment requests submitted by the authorized level 2 representative by communicating with that representative. Often, correspondence is sent to the taxpayer (not to the authorized representative) advising that the on-line T1 adjustment request has been cancelled, and asking the taxpayer to start the

process again, this time with supporting documentation. The standard wording of the letter includes the reminder that change requests can be made online using the "Change my return" option – the mechanism which failed to work for the adjustment which much be resubmitted. Can the CRA please confirm their policies in respect of the following:

i. That the taxpayer or representative should be contacted regarding supporting information required for a T1 Adjustment request, however submitted (that is, that cancelling the request is not the CRA's policy);
ii. That communication regarding adjustment requests submitted by an authorized representative is to be directed to that authorized representative.

c) These policies respect the right of the taxpayer to be represented by the person of their choosing. If the above are not the current policies, would the CRA consider implementing them?

i. Could the CRA remind its staff in the T1 Enquiries and Adjustments sections of these policies, given they do not appear to be followed consistently?
ii. Can the CRA suggest a process which a taxpayer or their representative might follow in such cases to expedite matters? Presumably, CRA would rather practitioners not submit the request on paper so supporting documentation might be included, and/or file service complaints in an effort to expedite the process.

Canada Revenue Agency (CRA) Response Part a):

Thank you for your suggestion. We currently do not have any plans to add such functionality. In situations where supplemental documentation is required to support the T1 adjustment request, the CRA will contact the taxpayer and the documents can be submitted electronically at that time.

Canada Revenue Agency (CRA) Response Part b):

Currently, the "Represent a client" registration page does not capture the representative's address. As such, when an adjustment request is received electronically and additional documentation is required, the request is sent to the taxpayer. We are looking into this and appreciate you bringing this to our attention.

Canada Revenue Agency (CRA) Response Part c)

We are looking into this and appreciate you bringing this to our attention.

Q19. Correction of Capital Losses Carried Forward

In Technical Interpretation 2013-0479161E5, the CRA noted that capital losses of taxation years past the ordinary reassessment period can be corrected indefinitely to adjust capital losses available for carry forward (assuming there were no capital gains in the year of the loss against which the losses would have been required to be offset). Can the CRA advise on the best process for advising of a previously unclaimed capital loss to request an

adjustment to the CRA's records?

Canada Revenue Agency (CRA) Response

The corporation should submit an amended Schedule 6 to show details of the capital loss. The question implies they are claiming a loss which had not been previously reported at all. Therefore, the CRA would need an amended Schedule 6 for the year the loss comes from in order to record all the fields in the corporate tax assessing system (CORTAX). It is difficult to generalize in such a way to cover all instances. In some cases, the corporation may need an amended return to go along with the Schedule 6, if there are other related adjustments. If the corporation is planning to apply the capital loss against a taxable capital gain in a subsequent year that has also been filed already (this could be the reason they are now claiming this prior year loss), then they should also be filing an amended return for the subsequent year as well.

To do this the corporation could file an amended return with an amended Schedule 6 through certified T2 software. There is also a line where they enter the "Description of changes" (line 996 on CORTAX) where they can provide details of the request. However, if it is a prior year loss, it is possible the requests will be going back to a year that is too old to file via software. If this is the case, the corporation would need to mail the amended Schedule 6, perhaps with a cover letter outlining any additional specifics of the request.

To summarize, any way that the corporation can request an amendment to the T2 return will be an acceptable way to do this as long as they provide all the information/schedules/ pertinent details.

Q20. Ongoing Authorization for Deceased Taxpayers

At present, all authorization of representatives are cancelled when a taxpayer dies. In the past, CRA indicated that a planned change in this process would maintain the validity of authorizations which were in place on the date of death. Can the CRA please provide an update on this planned service enhancement and any details which can be confirmed (e.g., how long such authorizations will remain active in the absence of either cancellation or confirmation by the Executor)?

Canada Revenue Agency (CRA) Response

Starting in May 2019, online authorizations for deceased business taxpayers will not be terminated upon receipt of the date of death. They will continue until 1) they are cancelled by a legal representative (ex. an executor) or by the authorized representative themselves, or 2) upon the arrival of the expiry date that was provided on the signed consent form.

The same criteria will be extended to authorizations for individual (T1) clients in February of 2020.

Q21. Electronic Filing Enhancements

Can the CRA provide an update on planned enhancements to electronic services, including the following:

a) The CRA has previously indicated a plan to allow capital dividend elections (Form T2054) and requests for confirmation of CDA balances to be filed electronically. Can CRA update the planned implementation of this service enhancement?

b) Does the CRA have plans to allow any other elections to be filed electronically? Perhaps, as an interim measure, a system to permit elections to be uploaded through represent a client might be considered. This would allow a confirmation number to be issued, facilitating any future enquiries, as well as permitting better security than the mail allows.

c) Have the CRA's plans to allow online access to information for trusts and estates, similar to My Account and My Business Account, progressed?

d) Will the ability to EFILE T3 trust and estate returns be enhanced in the foreseeable future?

e) Would it be possible to allow online application for a Trust Identification Number, similar to the Business Number system presently in place?

f) Are there any plans to enable online access to Nonresident Withholding Tax accounts? It would be ideal if these accounts could transition to the Business Number and be folded in to My Business Account.

g) Are there any plans to expand the submissions which can be made online through the Submit Documents process? An open enquiry system to allow upload of correspondence in any form (replacing physical mail through Canada Post) which generates, rather than requiring, a reference number seems like it would merit consideration.

h) Expanding even further on (g), above, would the CRA consider implementing an electronic communication system through Represent a Client, which would permit the convenience and efficiency of email-style communication while maintaining data security by remaining within CRA's systems? Allowing inquiries from authorized representatives (and taxpayers as well) may reduce the challenges experienced on the CRA phone lines.

Canada Revenue Agency (CRA) Response Part a):

The CRA is working towards having the Schedule 089 and the capital dividend election (Form T2054) available to be added to software packages in 2020.

Canada Revenue Agency (CRA) Response Part b):

The CRA is always looking for ways to improve service to Canadians. We thank you for the suggestion and we will take this into consideration as we work to improve our services and better meet your needs.

Digital filing of GST/HST related elections is already available for some types of activities. In October 2019, we are introducing additional functionality that will enable most of the other GST/HST elections to be eligible for digital filing under the current “File an election” service in My Business Account and Represent a Client.

For these additional GST/HST elections, you will first need to download, complete and save the CRA’s fillable PDF form on your computer. On the “File an election” page, you will select the desired election type from a drop-down menu and then upload the completed PDF form from your computer.

Canada Revenue Agency (CRA) Response Part c), d), and e):
Budget 2018 announced new reporting requirements and funding to modernize the CRA trust program and systems. Some of the enhancements planned include online registrations for trust identification numbers. These enhancements are being explored for 2022/2023.

Canada Revenue Agency (CRA) Response Part f):
The CRA recognizes the value in providing digital services and we are continually exploring options for improving the services we deliver. We are currently assessing the feasibility of implementing digital offerings for non-resident tax accounts.

Canada Revenue Agency (CRA) Response Part g):
As new workloads and programs are on-boarded each year, we continue to expand the types of submissions that can be sent to the CRA using the Submit Documents service. The ability to provide any type of correspondence to the CRA using the Submit Documents service is not an option that is being pursued at this time.

Canada Revenue Agency (CRA) Response Part h):
As we expand our suite of digital services, the CRA continually strives for service excellence while ensuring the highest level of security and protection of confidential taxpayer information.

The use of email is not a secure means of communication, but we do have electronic correspondence capabilities within our My Account and My Business Account portals for those taxpayers who have a need to deal with auditors, or wish to submit a business enquiry.

However, in the future, we hope to expand this to other services so more taxpayers, including representatives, will be able to communicate with us in their preferred manner. Through our portal enhancements, we are looking at communication mechanisms with our clients and how we can continue to do these through a secure channel that satisfies the need.

Q22. Possibility of Allowing More Detail to be Transmitted on Personal Tax E File.

Tax preparation software often allows preparers to provide significant detail regarding, for instance, medical and donation credits. However, only one cell for each of these amounts is transmitted on Efile.

Is the CRA contemplating allowing more detail to be Efiled?

Canada Revenue Agency (CRA) Response

CRA does not require this additional information to process tax returns; when we do need to verify, CRA will request the pertinent documentation.

Q23. CRA Payroll Services – Access to Supervisors

In dealing with payroll/rust account reviews, CPAs report continued issues with CRA representatives who refuse to give out the names and telephone numbers of their team leaders. This issue was discussed at the 2016 CRA Roundtable, and we were advised that the policy to provide team leader or supervisor information is the same as for the Audit Division and other branches of CRA. We continue to see occasional issues in other CRA areas (e.g. Appeals; Assessing); however, these seem to be exceptions. Within the payroll area, it seems to be the norm.

a) Please confirm (again) that this policy extends to Payroll/Trust Review.
b) Would the CRA consider a reminder, ideally through a formal training process in this division, of this policy?
c) To our knowledge, this policy is not published on the CRA website, nor in any official publication. Would it be possible for CRA to put this policy in writing so that taxpayers, and their representatives, might reference it should they encounter a CRA representative who is not well versed in this policy? Given the CRA's consistent reassurances that this is an ongoing, Agency-wide policy, we are uncertain why it is not already published in this manner.

Canada Revenue Agency (CRA) Response Part a):

Yes. CRA representatives are to provide the name and telephone number of their supervisor to an authorized representative, upon request. This applies equally to payroll/trust review as it does to other areas of the CRA.

Canada Revenue Agency (CRA) Response Part b):

We will continue to remind employees of their service obligations to taxpayers and their authorized representatives, including the need to provide supervisory contacts when requested.

Canada Revenue Agency (CRA) Response Part c):

Nearly all of the CRA's publications state that taxpayers who disagree with how their concerns are addressed, may discuss the matter with an employee's supervisor. Such publications include:

- RC17 – Taxpayer Bill of Rights Guide: Understanding your rights as a taxpayer. Under right #9 'You have the right to lodge a service complaint and to be provided with an explanation of our findings' there is the following specific reference 'If you still disagree with the way your concerns were addressed, you can ask to discuss the matter with the employee's supervisor.'

- T4001 – Employers' Guide – Payroll Deductions and Remittances. There is no specific reference to being able to contact the Team Leader. Page 14 under the caption "How to appeal a payroll assessment or a CPP/EI ruling' only references publication P133 in which there is no reference to the possibility of contacting the employee's Team Leader or supervisor. There is mention however of contacting the Chief of Appeals.

- T4130 Employers' Guide – Taxable Benefits and Allowances. Page 42 under 'Our service complaint process'.

- RC4188 – What you should know about audits, and IC98-1R7 – Tax Collections Policies. Page 4 under 'Your rights and responsibilities' makes reference to the Taxpayer Bill of Rights and the right to file a complaint. (Please see response under RC17 above), and

- IC98-1R7 – Tax Collection Policies. Page 5 under the heading of 'Objections and Appeals' provides the following link: www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/complaints-disputes.html.

  From the link you need to access 'Make a service complaint'. Under 'Step 1 – Talk to us first' is where the reference is found.

If taxpayers or authorized representatives encounter instances where a CRA employee refuses to provide the name and phone number of their supervisor, they are invited to contact the CRA manager responsible for that area. Contact information for CRA managers may be found in the member area of the CPA Alberta website.

GST Questions

Q1. Document Retention Policies

As Canada's population ages and the employment rate stays low, employers are experiencing unprecedented levels of retirement and turnover. This can create document retention and management difficulties in today's digital age, when employees often use their email inbox and folders as a convenient, informal, document management system. One such difficulty arises where departing employees may not properly flag all relevant communications, notes, and other digital files within an organization's formal document management system.

What document retention policies does the CRA have in place regarding emails and other digital files created by departed employees? In particular, we have the following specific questions:

a) How long does the CRA retain digital files in relation to any particular file under audit, assessment or objection after the employee has departed the CRA? This would include files such as an employee's email inbox, outbox and other related folders in connection with internal communications between CRA auditors or appeals officers with either headquarters officials, Department of Justice officials, Department of Finance Officials, etc.
b) What steps are taken to safeguard relevant CRA communications that have not been flagged or associated to a particular file before such an employee's departure?

Canada Revenue Agency (CRA) Response Part a):

The retention policy for an employee's email inbox, outbox, or other files within Outlook would have to be addressed by the Information Technology area. In terms of documentation relevant to a particular objection or appeal, all communication, whether with the taxpayer, internally in CRA or externally with other Departments (records of conversations, emails, letters etc.), are saved in FileNet indefinitely. Any of the conversations mentioned in the question would have been revealed to the taxpayer under our transparency guidelines, subject to solicitor/client privilege.

Canada Revenue Agency (CRA) Response Part b):

Files are reviewed by Team Leaders to ensure that all relevant documentation is saved in the appropriate area.

Q2. Cryptocurrency GST/HST Treatment

We understand the CRA is working on how the GST/HST treatment is being administered in relation to how it will apply to cryptocurrency and the mining of cryptocurrency. Is there an update on this and when can we except to see a publication on this?

Canada Revenue Agency (CRA) Response

Cryptocurrencies (also referred to as “digital currencies” or “virtual currencies”) have gained increasing acceptance as an investment vehicle and as a medium of exchange. Accordingly, we have seen an increase in queries involving the GST/HST treatment of cryptocurrencies and the various supplies involved with cryptocurrencies.

With respect to Bitcoins, the CRA has indicated that where Bitcoins are used to purchase taxable goods and services, the GST/HST is payable in respect of the purchase based on the fair market value of the Bitcoins at the time of the purchase.

The CRA has previously taken the position that, to qualify as a “currency”, a medium of exchange must be issued by a country as legal tender. Furthermore, to qualify as a “cheque, promissory note, letter of credit, draft, traveller’s cheque, bill of exchange, postal note, money order, postal remittance, and other similar instrument”, an instrument must be issued to pay a debt or to transfer funds upon the credit of the issuer. Based on these positions, Bitcoins are not a currency, and they are not a cheque, promissory note, letter of credit, draft, traveller’s cheque, bill of exchange, postal note, money order, postal remittance, or other similar instrument for the purpose of the definition of “money”.

If Bitcoins are not characterized as “money” for GST/HST purposes, then they would likely be characterized as intangible personal property (IPP). In such circumstances, a supply of a Bitcoin in exchange for a supply of property or a service would be regarded as a barter transaction. If both parties to the transaction are GST/HST registrants, and if both supplies are made in the course of a commercial activity, both parties would be required to charge and collect the GST/HST on their respective supplies. The value of consideration for the supplies would be equal to the fair market value of the supplies at the time the supplies are made, in accordance with paragraph 153(1)(b) of the *Excise Tax Act*.

The CRA is presently **considering its position** regarding the GST/HST treatment of Bitcoin and similar cryptocurrencies given the increasing use of cryptocurrencies.

Q3. Charities S. 211 Election

A common situation exists when a charity is operating as if a section 211 is consistently in place and was filed on a property. It is revealed under audit that the CRA internal system does not show that the 211 election is on file. The election the charity thought was filed may have occurred 10+ years ago and with resulting changes in directors/staff, the original documentation is not found. This type of situation is very common among public service bodies as voluntary board of directors may change annually. Will the CRA administratively allow elections under section 211 of the ETA to be ‘late-filed’ in such circumstances?

Canada Revenue Agency (CRA) Response

The manner, form, and time limitations for filing GST/HST elections are set out in the respective legislative provisions of the *Excise Tax Act* (the ETA). Subsection 211(5) of the ETA requires that an election made under subsection 211(1) by a public service body (including a charity) must be filed in prescribed form (GST26) and manner. The real property in respect of which the election applies and the date on which the election becomes effective must be specified on the form. Paragraph 211(5)(c) provides that the

election must be filed with the Minister within one month after the end of the reporting period of the person in which the election comes into effect.

The ETA does not provide the Minister with discretion to accept a late-filed section 211 election. Consequently, where the filing requirements as specified in paragraph 211(5)(c) are not met, the CRA will generally not accept a late filed election. However, if a charity has been charging the GST/HST on supplies of real property that would otherwise be exempt and has been accounting for that tax and claiming any ITCs it may be eligible to claim in its net tax calculations and remittances as if the election had been filed in accordance with subsection 211(5), the CRA may accept a late filed-election, effective as of the date the charity began charging the tax, if the charity was eligible to file the election on that date.

A late-filed section 211 election in respect of a particular real property will not be accepted where the election would provide a retroactive tax planning benefit not otherwise available to the charity.

The CRA's acceptance of a late-filed section 211 election is not automatic. Each situation is reviewed on a case-by-case basis to determine whether the person was eligible to file the election and acted as though the election has been filed as required.

Q4. Late-Filed S. 156 Elections – Denied

Compliance programs branch has stated their priority is to increase service to taxpayers/registrants. We have noticed there has been a big change in administration of the policy found in Notice 255 regarding the late-filed s.156 elections. For example, where a registrant is found non-compliant by filing one or more GST/HST returns late, the registrant is accused of being neglectful or careless and therefore the s. 156 election is being denied.

Canada Revenue Agency (CRA) Response

One of the priorities of the Compliance Programs Branch of the CRA is to increase service to taxpayers/registrants. GST Policy Statement P-255 provides guidelines on when the CRA will accept a late-filed election that pertains to section 156 of the *Excise Tax Act*. Under administrative tolerance, the CRA may consider a request to accept a late-filed election. These requests will be considered on a case-by-case basis. As a condition, Paragraph 4 of policy statement P-255 specifies that all GST/HST returns must be filed by all parties to the election, and, that the parties must be fully compliant with the GST/HST legislation. Where GST/HST returns are outstanding, or a registrant is non-compliant, the request to accept this election will be denied. The CRA encourages you to file your outstanding GST/HST returns (if any) in order to meet this condition. Registrants filing this election must also meet all other conditions outlined in GST Policy Statement P-255.

Q5. Policy on Late-Filed S. 156 Elections

With the change in the requirement to file the s. 156 election with the CRA, registrants and practitioners did not receive notification or communications of the change in administrate practices taking into consideration the CRA's response to a question on this issue in the September 2017 CPA Alberta Roundtable. What is the current administrative audit policy

on late filed s. 156 elections where there is no revenue loss to CRA/the Crown and in consideration of the fact that the legislation prior to January 1, 2015 did not require the election to be filed with the CRA?

Canada Revenue Agency (CRA) Response

It is always a question of fact whether or not the CRA will accept a late-filed election. Each case must be examined on its own merits. All facts surrounding the situation must be taken into consideration as a whole and not in isolation. A registrant must make a request that the CRA accept a late-filed section 156 election. GST/HST Policy Statement P-255, Late-filed Section 156 Elections and Revocations, provides some guidance as to when the CRA will generally accept a late-filed section 156 election.

It is important to remember that the onus is on the registrants to keep abreast of any new developments in the administration of GST/HST to ensure their continuing compliance. Information on the new filing requirements under section 156 were released in sufficient time to allow registrants to comply. Information was released as follows:

- Federal Budget 2014-15: announced February 2014
- Notice of Ways and Means Motion to Amend the Excise Tax Act 2014-02-11
- Excise and GST/HST News No. 91 issued 05-2014
- Excise and GST/HST News No. 94 issued 01-2015
- Excise and GST/HST News No. 95 issued 04-2015
- GST/HST Notice No. 290 December 2015 Filing Deadline – Reminder to file form RC4616 before January 1, 2016 for existing 156 elections – issued 12-2015

Q6. Minimum Penalty on Unfiled Returns

Certain information returns are required to be filed with the CRA that may not result in any GST/HST payable. In relation to the penalties levied under section 284.1 for the annual information returns of financial institutions, where the penalty is applied to an unfiled return, does a zero dollar line item trigger the minimum penalty amount of $1,000?

Canada Revenue Agency (CRA) Response

In addition to any other penalties, there are two penalties under section 284.1 of the *Excise Tax Act* (ETA) that may apply to an amount required to be reported in the annual information return for financial institutions.

Guide RC4419, *Financial Institution GST/HST Annual Information Return*, lists the specific line numbers of the information return that may be subject t a penalty under subsection 284.1 (1) or (2) of the ETA.

Where a particular line is subject to a penalty under subsection 284.1(1)

Where an information return that was not filed on time is subsequently filed, and the correct amount reported on the particular line is zero (which is a question of fact and subject to

audit), there would be no penalty under subsection 284.1(1) based on the formula for calculation the penalty in that subsection.

Specifically, a penalty under subsection 284.1(1) may apply if a reporting institution fails to report an amount when and as required, or misstates such an amount, For each failure or misstatement, the penalty is equal to the lesser of $1,000, and 1% of the absolute value of the difference between the correct amount and:

- where the reporting institution failed to report the amount when and as required, zero; or
- where the reporting institution misstated the amount, the amount reported by the reporting institution in the information return.

Where a particular line is subject to a penalty under subsection 284.1(2)

Where an information return that was not filed on time is subsequently filed, and the correct amount reported on the particular line is zero (which is a question of fact and subject to an audit), a penalty under subsection 284.1(2) would be calculated based on the formula in that subsection.

Specifically, a penalty under subsection 284.1(2) may apply if a reporting institution fails to provide reasonable estimates of amounts for which estimates can be provided when and as required. For each failure, the penalty is equal to the lesser of $1,000 and 1% of the total of:

- all amounts that became collectible or that were collected by the reporting institution, as or on account of the GST/HST, in a reporting period in that fiscal year; and
- all amounts that the reporting institution claimed an as input tax credit in a GST/HST return filed by the reporting institution for a reporting period in the fiscal year.

It is important to note that a penalty under subsection 284.1(1) or (2) of the ETA will only apply where the reporting institution did not exercise due diligence.

Where a return has not been filed, the CRA may apply the $1,000 penalty for a particular line in the absence of information that would support a lower penalty amount.

Subsection 284.1(3) of the ETA provides the Minister of National Revenue with the authority to waive or cancel penalties payable under this section. This authority is exercised on a case by case basis. Generally, penalties would be cancelled or waived where they have resulted from an extraordinary circumstance beyond a person's control, which prevented the person from complying with the reporting requirements in section 273.2 of the ETA. The fact that a particular financial institution is unaware of its obligations to file the information return by itself would not generally be sufficient justification for the Minister to waive or cancel penalties payable under section 284.1.

Under the Voluntary Disclosures Program, GST/HST registrants can make disclosures to disclose information they have not provided during previous dealings with the CRA, and may avoid penalty or prosecution if they make a valid disclosure. GST/HST Memorandum

16.5, *Voluntary Disclosures Program*, provides information on making a voluntary disclosure.

Q7. Gross Negligence Penalty – Policies on Application

During the course of a desk or field audit, there is a proposed or actual application of the gross negligence penalty under section 285 of the ETA, what kind of administrative procedures and internal CRA controls are in place to ensure that the gross negligence penalty is being applied fairly and correctly? For instance, please consider the following scenarios:

a) Where GST/HST returns are unfiled due to administrative bookkeeping or accounting oversight, is gross negligence applicable?
b) During an audit, if a registrant's records are not provided in a timely manner that is agreed upon by both the auditor and the registrant or their representative, is gross negligence applicable?
c) Where GST/HST was collectable on a new one-time revenue stream and was not remitted due to administrative oversight, but found under CRA audit, is gross negligence applicable?

Canada Revenue Agency (CRA) Response Part a):

Generally, gross negligence requires that a false statement be made in a return, application, form, certificate, statement, invoice, or answer. As the return is not yet filed, that alone is not sufficient grounds to establish gross negligence.

However, there may be extraordinary circumstances which may warrant the application of gross negligence penalties. The decision in Kion v. HMQ, [2009] suggests that even where no return has been filed, a gross negligence penalty under section 285 is permissible. In this case, the registrants provided false information to cause a partnership to be deregistered for GST/HST purposes.

The simple fact that a person has not filed a GST/HST return for a specified reporting period does not automatically preclude the application of the gross negligence penalty under section 285 but the element of making "a false statement or omission…." must be present. The critical element is the proper identification that the breach of the ETA is the making of a false statement or omission in a "return" and not the simple failure to file the GST/HST return.

Canada Revenue Agency (CRA) Response Part b):

Based on our above-stated position with respect to section 285 and un-filed GST/HST returns, the fact that a registrant solely fails to respond to an audit contact letter or fails to provide records on time is generally insufficient grounds to apply gross negligence penalties. It has not been established that a false statement or omission in a return has been made.

However, an auditor may assess penalties under Section 284 where a person who fails to provide any information or document when and as required is liable to a penalty of $100 for every failure unless the Minister waives the penalty.

Canada Revenue Agency (CRA) Response Part c):

There is insufficient information to provide a definitive answer to this question. Going back to scenario a) above, it is always a question of fact whether or not gross negligence penalties may apply. The standard of determination and assessing of gross negligence penalties are held to a high level, as the onus is on the CRA to demonstrate that the person knowingly, or under circumstances amounting to gross negligence, made or participated in, or assented to or acquiesced in the making of a false statement or omission in a return, application, form, certificate, statement, invoice or answer (each of which is in section 285 referred to as a "return") in order for the gross negligence penalty to apply.

Consideration of gross negligence penalties are performed on a case-by-case basis and a holistic view of the case facts are taken into account. There are many factors that our auditors and examiners must consider when determining whether gross negligence penalties should be applied.

Usually, gross negligence penalties are not assessed where it is considered that there was a genuine misinterpretation of the ETA on the part of the registrant and it is reasonable to assume that the registrant did not know whether a particular supply was a taxable supply.

Generally speaking, no penalty will be assessed where it appears that the registrant was confused about the reporting of an amount and it is the first time a penalty is being considered. However, gross negligence penalties may be considered based on the materiality of the error or where the registrant was previously advised of penalty consideration for similar conduct.

Q8. ITC – Multiple Unit Residential Complex (MURC)

What is CRA’s position on Input Tax Credits being claimed by a person where invoices are issued subsequent to the date of substantial completion of a multiple unit residential complex (a “MURC”)?

For example, suppose a person constructs a MURC, reaches a level of at least 90% completion, obtains an independent appraisal, has tenants move in to the unit(s), and later receives invoices dated after this date, but pertain to work done by suppliers for goods and services sold/installed performed prior to the first tenant move-in.

A similar scenario could arise where additional construction work may be required to correct flaws in the original construction that were undetected earlier. Had such flaws been noted prior to self-assessment, the person would be eligible to claim ITCs for such costs.

Furthermore, the fair market value upon which the self-assessment is based will typically be higher than the total costs of construction, meaning that CRA would not be in a tax-loss position.

Where the person has already self-assessed pursuant to section 191, we find CRA routinely denying ITCs for GST/HST paid on invoices that relate to work performed (or required to be performed on deficiencies present before 90% substantial completion) for which the value would have been included in the FMV determined by the independent appraiser.

Will CRA provide its comments on whether ITCs will be allowed on GST/HST returns subsequent to the self-assessment where those ITCs relate to GST/HST paid on costs reflected in the FMV used for the self-assessment?

In the same vein, we would like confirmation that CRA audit technical advisors spend some resources in educating auditors who are looking at residential self-assessments and/or related rebates in their desk or field audits, to ensure they are fully informed of the how the rules work as well as learning the basics of residential real property rental properties valuations.

Canada Revenue Agency (CRA) Response

Subject to time limits, documentary requirements, and other conditions, subsection 169(1) generally allows a registrant to claim ITCs to recover the GST/HST payable on acquisitions of property and services to the extent (expressed as a percentage) that the property and services are acquired for consumption, use, or supply in the course of the registrant's commercial activities.

Where a registrant is a builder of a MURC and is liable to account for a self-supply of the MURC under subsection 191(3), the registrant is generally eligible to claim ITCs to recover the GST/HST payable on acquisitions of property and services that are for consumption or use in constructing the MURC.

Under section 133, a supply of property or a service is generally considered to be made at the time that the agreement to provide the property or service is entered into. Therefore, where a builder of a MURC agrees to acquire property or a service for consumption or use in constructing the MURC, the supply of the property or service is generally considered to be made to the builder at the time that the agreement is entered into (that is, the builder is considered to be the recipient of the supply at that time).

The time at which the consideration for a supply of property or a service becomes due under section 152 (for example, on the day the supplier issues an invoice in respect of the supply) does not impact the time at which the supply is considered to be made, nor does that time impact the purpose for which the recipient of the supply acquired the property or service.

Where a supply of property or a service is made to a registrant that is a builder of a MURC for consumption or use in constructing the MURC, the registrant is generally eligible to claim an ITC in respect of the property or service, even if the consideration (or part thereof) for the supply becomes due after the registrant is required to account for a self-supply of the MURC under subsection 191(3). All the criteria for claiming the ITC, as discussed in

paragraph 3 of GST/HST Memorandum 8.1, General Eligibility Rules (Memorandum 8.1), must be met in order for the registrant to be so eligible.

Conversely, where a registrant that is a builder of a MURC has accounted for a self-supply of the MURC under subsection 191(3) and has begun to use the MURC exclusively in making exempt supplies (generally, long-term residential rentals), and the registrant acquires property or a service for consumption or use in repairing the MURC (for example, in correcting flaws or deficiencies in construction) after the time of the self-supply, the registrant is not generally eligible to claim an ITC in respect of the property or service.

The eligibility for ITCs in respect of property or services acquired for consumption or use in constructing or repairing a MURC is determined based on the concepts set out above. This eligibility is not specifically determined based on whether the cost of the property or services is reflected in the FMV of the MURC that is used for a self-supply under subsection 191(3).

In general, under paragraph 225(4)(b), an ITC that arises in a particular reporting period of a person must be claimed in a GST/HST return for that reporting period or a subsequent reporting period, filed by the due date of the GST/HST return for the person's last reporting period that ends within four years after the end of the particular reporting period. The provisions related to time limits for claiming ITCs are discussed in paragraphs 82 to 87 of Memorandum 8.1.

Accordingly, a registrant that is a builder of a MURC may be eligible to claim an ITC in respect of property or a service that is for consumption or use in constructing the MURC in a GST/HST return for a reporting period subsequent to the reporting period in which a self-supply of the MURC is deemed to occur.

Q9. Unprocessed RC4616 Elections

Late-filed "Nil Consideration" elections (RC4616) may be processed by CRA according to P-255. However, we have come across at least three scenarios where these elections were submitted over a year prior, but have never been processed. Numerous discussions with CRA indicates that the elections have been sent for processing, but simply have never been acted upon. Is this delay due to a backlog and, if so, what is CRA doing to reduce that backlog? In the alternative, what is causing the considerable delays (or inaction/contact from CRA) and what, if anything, is CRA considering to improve and expedite this process in connection with late-filed elections under section 156 of the ETA?

Canada Revenue Agency (CRA) Response

We had been experiencing high volumes of late-filed elections and added additional resources to address the back log in the Fall of 2018. The backlog was cleared in January 2019. Currently, we are up to date on the processing of late,filed elections and are advising registrants that processing time is approximately 30 to 45 days.

Q10. Change in FMV – NRRPR

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

Although we are unable to address any specific audit issue related to an actual audit case in this forum, we can offer you the following comments.

We understand that generally most practitioners would request that the change (increase) in NRRPR amount be offset against the assessment to net tax using subsection 296(2.1). However, subsection 296(2.1) only applies to unclaimed rebate amounts and cannot apply in cases where the person has claimed the allowable rebate in an application filed before the day the notice of assessment is sent to the person per paragraph 296(2.1)(b). In other words, the change referred to in the question would not qualify as an unclaimed rebate because the registrant had previously claimed the NRRPR. Furthermore, the registrant would be precluded from claiming and submitting a new rebate application as only one application per rebate per matter can be made pursuant to subsection 262(2). The change would not be considered a new matter. The registrant could request a re-assessment or consideration in the course of the audit of the NRRPR to take into account the change in GST/HST payable on the FMV provided the time limitation for assessing the rebate has not expired. However, we should note that there is nothing preventing (again, provided the rebate is not statute barred from re-assessment) the auditor from pulling in the original rebate and making the adjustments to the rebated amount in cases like the one described in this question. As an extension of service and fairness, it would be appropriate for the auditor to do so.

Q11. CRA My Business Account – View filed numbers

With online access to client's CRA My Business accounts (specifically GST/HST in this case), we can view a great deal of information, but cannot see the numbers on a GST/HST return filed by a client but which has not yet been assessed by CRA. These returns show up online as "Received," but the actual numbers on the return are not viewable. Should a client have, for example, a net GST/HST refund due on a return that is under review by CRA, we are at a disadvantage trying to discuss the file with the CRA reviewer. Certainly, we can get the details of the specific return from the client, but it would much better if we could see what was filed before it is assessed by CRA.

Has CRA given any consideration to allowing this type of access?

Canada Revenue Agency (CRA) Response

Thank you for the suggestion. We will evaluate the development requirements needed in order to present a view of numbers on a GST/HST return filed but not yet assessed.

Q12. Electronic Filing – NRRPR Forms

We have a corporate client that had applied for the GST NRRPR rebate, which reduced the GST owing on the self-assessment of the FMV of a residential rental unit. The client completed and mailed the rebate form to CRA. Our client received a phone call from CRA collections requesting payment stating CRA did not receive the forms and the full amount of GST was due. Because it was mailed, there is no proof of it being sent or delivered. Is CRA going to allow the NRRPR form to be electronically submitted, so that these unfortunate situations do not re-occur?

Canada Revenue Agency (CRA) Response

Electronic filing of form GST524, New Residential Rental Property Rebate, is planned for introduction in 2020.

Q13. Non-Residents and Carrying on Business

As a result of the South Dakota v. Wayfair, Inc. court case in the USA and the recent changes to Quebec's non-resident requirement to become QST registered, has the CRA given any consideration into changes in policy with respect to the when a non-resident is 'carrying on business' resulting in a requirement to become registered for the GST/HST found in P-051R2?

Canada Revenue Agency (CRA) Response

Neither the United States Supreme Court decision noted in the question nor the QST legislative amendments by the Province of Quebec will impact the determination as to whether a particular non-resident person is carrying on business in Canada for GST/HST purposes

Q14. Notional assessments and subsequent filing of GST/HST returns

We have had a CRA auditor who has stated to a client that the CRA is discontinuing its practice of automatically overriding/overturning notional assessments when GST/HST Registrants file the outstanding GST returns. It was relayed to our client that the notional assessment will need to be actioned by filing a Notice of Objection.

What is the position of the CRA on overturning the notional assessment when the GST return is filed? If it is discontinued, it would seem that it will add to an already full backlog of files with the Appeals Directorate.

Canada Revenue Agency (CRA) Response

The purpose of issuing the notional assessments is to encourage the taxpayer to file their GST/HST returns. In 2018, binding notional notices of assessment (NNOAs) were raised for the months of May to August by the GST/HST Trust Accounts Examination (TAE)

program. Outside of this timeframe, there was a temporary withdrawal from this process. This process is expected to return in July or August 2019, with refined parameters.

During the months of May to August 2018, binding NNOAs were issued in all completed exams where records were reviewed but:

- No returns were provided; or
- The returns provided differed from the records reviewed.

When we return to this practice in 2019, binding NNOAs will be issued on completed exams where full records were reviewed but:

- No returns were provided

This process only applies to NNOAs raised subsequent to a GST/HST Trust Accounts Examination, where an on-site review of books and records was completed and the registrant did not file a return.

Binding NNOAs would require the registrant to file a Notice of Objection to make any changes to the assessment. Non-binding NNOAs can be overridden at any time with a filed return by the registrant.

Note: When calculating manual non-binding NNOAs, compliance officers (including TAE, Delinquent Filer Officers and Non-Registrant Officers) will look for T1 or T2 information that can indicate the sales figures they can use to base the assessment on. In those cases, ITCs are not included in the assessment. In cases where system information is not available, those programs will use net tax (sales minus ITCs), which includes previous history of ITCs to calculate the new net tax to base the assessment on. For binding assessments, the CRA will not include ITCs as the TAE program does not want to make a decision on behalf of the registrant on when to claim their ITCs. There is no legislative requirement to include ITCs when raising notional assessments. Registrants can either file their return(s) and include the ITCs, claim them on a future period, or be assessed based on sales.

Also of note in respect of this statement "…it will add to an already full backlog of files with the Appeals Directorate." – We are in contact with Appeals on this matter and do not anticipate that the volume of files that go to Appeals will be significant at the present time. We are also working with Appeals to make changes to the decision tree registrants can view online to determine what their recourse is.

Q15. Amendments to section 186

Does the CRA have an update on the amendments to section 186 of the *Excise Tax Act* proposed by the Department of Finance? Is there a timetable we can expect to see these changes?

How is the CRA administering the proposed amendments to section 186 of the Act in a case where there is a Holding Company which also owns the land and building and leases the building to an operating company, and how the amendments may restrict ITCs because of the "property test"?

Canada Revenue Agency (CRA) Response

The CRA is revising GST/HST Memorandum 8.6, Input Tax Credits for Holding Corporations and Corporate Takeovers, to reflect the proposed changes to section 186 of the *Excise Tax Act* announced by the Department of Finance on July 27, 2018.

At this time, the Department of Finance has not announced any timetable regarding when you can expect to see these changes enacted.

Although there is information missing from the final question posed above, if a Holding Company is a registrant that is resident in Canada, owns land and a building in Canada, and it makes a taxable supply of this land and building to an operating company for consideration, the Holding Company would generally be eligible for input tax credits on inputs it acquires for the purpose of making this supply, where all other conditions for claiming an ITC are met. If this does not address the question and the question is more specifically regarding proposed paragraph 186(1)(c), we would need additional information such as the nature and purpose of the inputs, organizational structure, and separate entity property information to allow us to provide a general response to the question.

Q16. GST / HST VDP Statistics

Can CRA share any statistics on the use of the VDP program for GST/HST now that the new program has been in place for a year? Is the Agency considering any further changes to the program in the next year given that there may have been a decline in the use of the program?

Canada Revenue Agency (CRA) Response

From March 1 2018 to February 22, 2019, the CRA received 688 GST/HST VDP applications. Many files received under the new policy are still at the reviewing stage since the program is completing the processing of disclosures received before March 1, 2018 first. As such, it is too early for the program to provide statistics specific to the new policy.

When Minister Leboutillier announced the policy changes on December 15, 2017, she stated that the new program would remain in place for at least two years and that the CRA would continue to review the program. More can be found at:

https://www.canada.ca/en/revenue-agency/news/2017/12/minister_lebouthillierannouncestighteningofthevoluntarydisclosur.html.

Q17. Wholesaler license under the federal excise tax

A wholesaler "W" license can be issued under the federal excise tax on various goods taxed under Part III of the *Excise Tax Act*, where at least 50 percent of the sales of the wholesaler for the three months immediately preceding the application for license were exempt from excise tax. Exempt sales include goods for export, or goods sold to other holders of a wholesaler license. It is understood that the application is subject to audit by the Canada Revenue Agency ("CRA").

In discussion with CRA officials, we were told that 50% of the total revenue number for the entire three months (not each individual month) preceding the application for the license will be considered. However, it has come to our attention that some non-resident entities were denied a wholesaler license because all their sales are exported.

We understand that CRA is preparing a publication to clarify its position. Please provide any updates on this, or can you confirm that "export only" sales do not qualify an entity for a wholesaler license?

Canada Revenue Agency (CRA) Response

There is currently no publication being prepared that will clarify CRA's position with respect to wholesale licenses.

There are a number of factors that can affect the approval or denial of a wholesale license application. Without a specific example, it is difficult to comment on the reason the application(s) at issue was denied.

CRA has in fact approved some wholesale licenses for non-resident entities that meet the qualifications as outlined in the ETA. However, it should be noted that paragraph 66(a) of the ETA restricts the exemption on exported goods to goods "…exported from Canada by the manufacturer, producer, or licensed wholesaler…".

We typically try to educate non-resident entities, and resident entities, that are thinking of applying for a wholesale license to first consider using the N-15 refund application as a means to properly account for their federal excise tax. The N-15 application has the following advantages over the wholesale license:

- There is no need to meet the 50% threshold in the immediately preceding three months
- There is no need to file monthly returns even if there is no activity in that month (many entities export only sporadically so they can simply file an N15 claim as needed)

- There is no need to post and maintain a bond with CRA
- Audits of their activity would be limited to the specific transactions claimed as opposed to the entire business operations of a licensed wholesaler, and
- Licensed wholesalers are required to maintain their books and records in Canada or pay for the cost of the auditor to attend their foreign premises

Q18. Joint Ventures and purchase of real property

Where a Joint Venture consisting of two or more entities purchases taxable real property, and at least one co-venturer is registered for GST/HST, the vendor does not charge the GST under ss. 221(2) of the Act. The registered venturer(s) are required to self-assess the GST/HST on the property on Line 205 of their GST/HST return pursuant to ss. 228(4). Where no Joint Venture election has been made under section 273 of the Act and one or more co-venturer(s) are not registered for GST/HST, the GST/HST payable on their proportionate share of the real property is expected to be paid to the Vendor.

Consider where a Joint Venture may use a single operating name or representative to represent all purchasing entities of the Joint Venture. To what extent does the CRA consider the vendor held liable to collect GST/HST on the percentage of real property supplied to a non-registered co-venturer where no election under s. 273 (on form GST21) was made?

Where there is no loss to the Crown, what is the administrative tolerances to assessments? Will audit exercise the administrative tolerances under ss. 296(1) where the Minister may assess but does not?

Canada Revenue Agency (CRA) Response

Where a joint venture election under section 273 has not been made, the general rules governing the GST/HST will apply to participants in a joint venture.

As a general rule, under subsection 221(1), a vendor making a taxable supply of real property by way of sale is required to collect the GST/HST from the recipient(s) where the recipient(s) is not registered for GST/HST purposes. The vendor is liable to collect the GST/HST from the recipient(s) based on their proportionate share of ownership in the real property. Under section 165, the recipient of a taxable supply of real property is required to pay the GST/HST where subsection 221(2) does not apply.

<u>Liability to collect GST/HST</u>

In the scenario provided, subsection 221(1) imposes the liability for collecting and remitting the GST/HST on the vendor for the sale of real property to a non-registered participant where no election under section 273 is filed. That said, the minister may consider assessing the purchaser under paragraph 296(1) (b) where warranted.

<u>Backdated GST 21 Election for Joint Venture Participants</u>

However. in situations where a registrant may have filed an election to be relieved of the requirement to charge and collect GST/HST, but failed to do so, Audit may allow a

backdated election. Generally. if the conditions of the GST 21 (Election to Have the Joint Venture Operator Account for GST/HST) have been met. and the parties have treated their transactions as if the election had been valid (which is supported by agreements/invoices) and the parties are otherwise compliant with the CRA, Audit will allow this election to be backdated.

Q19. GST/HST Return Reporting

Assume a GST/HST registered, non-resident has no GST/HST permanent establishment in Canada. It makes purchases of tangible personal property ("TPP") in Canada from third parties and resells the TPP in Canada as well as exports the TPP for sale in the US. For the latter sales, the delivery may be made in Canada, but is a zero-rated supply when exported by the third party purchaser/exporter. In other cases, the place of delivery may be entirely outside Canada at some delivery point in the US. In addition, the non-resident also buys and sells TPP exclusively in the US, with no connection to Canada or the purchases and export sales in Canada noted above.

When the registered non-resident reports its total supplies on line 101 and line 90 and 91 on its GST/HST return each reporting period, should it also include in line 91, its sales made entirely outside Canada, where the purchase of the TPP was also made entirely outside Canada?

Various CRA publications and guides, as well as the guidance on the CRA website and the Netfile site, simply notes to report "all supplies made outside Canada". However, it does not distinguish between those related to purchases and sales entirely outside Canada, and those where the purchase was made in Canada, but delivery occurred outside Canada. Practically speaking, if the CRA were to use this information to try to line up with any income tax gross revenues, the amounts would not generally match if "all supplies outside Canada" made by the non-resident are compared to corporate tax information (such as a treaty-based return of a branch). As such, it would seem that any supplies where the purchase and sale are both made entirely outside Canada by the non-resident branch should not be reportable on line 91/101.

Canada Revenue Agency (CRA) Response

A person’s GST/HST filing frequency is determined by a threshold amount that includes the consideration for person’s taxable supplies made in Canada but does not include exempt supplies, zero-rated exports, goodwill, financial services, sales of capital real property, and supplies made outside Canada.

When completing the GST/HST return electronically, the person will be asked to complete lines 90, 91, and 102, if they choose to do so.

The excluded amounts are reported on line 91 of the GST/HST return, so the CRA is able to properly calculate the reporting period threshold amount.

If the person chooses not to complete lines 90, 91, and 102, the amount entered on line 101 will include the total amount of revenue from supplies of property and services, including zero-rated and exempt supplies, and other revenue for the reporting period.

The amount to be included on line 91 does not require a person to differentiate the supplies that have purchases and sales made entirely outside Canada from the supplies where purchases are made in Canada but delivery is made outside Canada. The amount is to be entered is simply “supplies made outside Canada”.

Q20. Changing and updating the RC4616 online

Currently, when adding one or more new entities to an existing RC4616 closely related corporations and partnerships election via the group of entities' My Business account/Represent a Client on the CRA website portal, the existing election must be revoked in its entirety, and a new election with an effective date on the day following the revocation. The new election must be made for all of the existing entities to the election plus any new ones added for the same effective date.

For instance, closely related Company A and Company B make an election under Company A's My Business account with an effective date of October 1, 2019 (assuming monthly filers). Then on December 1, 2019, closely related Company C wants to jointly file the RC4616 online with Company A and Company B. Company A and Company B must then revoke their existing election made October 1, 2019, to be effective on November 30, 2019. As a next step, all three companies must file a new RC4616 election (presumably under the My Business account of any one of the specified members) to be effective on December 1, 2019.

Will the CRA consider upgrading the RC4616 election filing feature on the My Business Account and Represent a Client online filing site, to accommodate the addition or removal of a specified member, on a particular effective date, without having to revoke the original election and re-file a new election with the updated/changed specified members? With a few companies in the group such as in the example noted above, this is not a challenge; however, in larger groups of 10 or more entities, this can become cumbersome and time consuming.

Canada Revenue Agency (CRA) Response

In the example given above, Company C can be added without revoking the original election between Company A and B. Company C would simply file a new election naming Company A and B as closely related members, with an effective date of December 1, 2019. This will establish two new elections (A with C, and B with C) with the December 1, 2019 effective date. The original election between Company A and B will remain unchanged, with the original effective date of October 1, 2019.

Revocations work a bit differently. For example, if Company A elects to leave the group they would need to submit a revocation request naming only Company B, and then a separate revocation request naming only Company C. However, if the entire group is to be dissolved (i.e. all combinations, namely A with B, A with C, and B with C), then only one revocation request is needed, naming Company A, B and C.