Member Advisory

April 2014

2013 Canada Revenue Agency (CRA) Tax Roundtable

The annual Canada Revenue Agency (CRA) Roundtable Meeting was held in May 2013. 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 GST issues and the other on income tax matters. All participants also attended a general wrap-up session.

For more information on the session, or on the 2015 Roundtable, contact Director of Professional Services Sean Johnson CA at s.johnson@icaa.ab.ca or call 1-800-232-9406.

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Income Tax Questions

PLENARY QUESTIONS

1. Represent a Client Portal

As always, we are interested in CRA's plans for new information or functionality to be added to the Represent a Client Portal. We would ask that you specifically address the following:

a) When a return is assessed or reassessed, a written explanation of changes made to the return, as well as some general comments on losses carried forward, etc., is normally included. However, this "summary of assessment/reassessment" detail remains on the portal for only the most recent (re)assessments issued. Can these be retained and be made available for a longer term? For example, if a penalty was applied, we can no longer see why it was applied.

CRA Response:

Providing the explanation of changes summary on My Account for previous (re)assessments is not feasible under our current systems; however, this may change for future years.

b) Often, this detail indicates that there have been changes made "in accordance with our recent letter." Would it be possible to retain these letters, and other correspondence (for example, requests for information) on the portal? In addition to enabling the representative to access this data without contacting CRA, this would also establish a history of correspondence which may be helpful to us in stressing the importance of dealing with CRA requests in discussions with clients "who never received anything before" the current document.

CRA Response:

As the Agency phases in the Manage Online Mail process (Go paperless), certain letters that have been made available for online mail may be may be viewable through Represent A Client or through View Mail (correspondence) in My Business Account, granted the proper authorization is in place.

c) Budget 2013 noted that business owners can now choose to "go paperless." Does this mean all CRA correspondence will be made available through My Business Account and/or Represent a Client? For what period of time will such documents remain available in this format? If not all correspondence will be made available in this manner, can the CRA clarify what will, and will not, be paperless? Will the electronic data available to businesses not participating in the "go paperless" initiative differ from that available to those that do participate?

CRA Response:

The first phase of the Manage Online Mail process was implemented on April 8, 2013. This service gives business owners the choice of receiving some of their CRA mail online. When they opt for "Manage online mail," the CRA will no longer print and mail correspondence to them. Instead, they will receive an email notification when there's mail to view in their secure online account. Business owners need to be registered in My Business Account in order to choose the online mail option. Once registered, they'll need to log into My Business Account, select "Manage online mail," and follow the steps to select the accounts for which they would like to receive online mail. Currently, business owners will be able to receive notices of assessment and reassessment and some letters for the accounts they select—for example, corporate income tax and goods and services tax/harmonized sales tax. More correspondence, such as payroll-related mail, will be available online in the future.

A similar service for representatives will be launched in April 2014; the CRA is analyzing an option for individual tax filers, as well. The online correspondence will be available for three years online. Taxpayers have the option to download, save or print their correspondence for any future reference.

Like today, correspondence will be available for viewing in My Business Account, View Mail (correspondence), in the same format, regardless if the taxpayer has chosen to "go paperless" or not.

d) Will the "go paperless" initiative be extended to other taxpayers (e.g. individuals) in the future? Can the CRA provide any indication of the type of taxpayers or a timeframe for future initiatives of this nature?

CRA Response:
Answered as part of answer c).

e) Would it be possible to add the ability for a person with authorized online access to two related entities to implement or request intercompany transfers, much as funds can presently be transferred between program accounts?

CRA Response:
This is not an option that is currently available. We will explore the possibility of offering this type of functionality in the future.

2. Adjustment Threshold

Both we and CRA face continual pressure to streamline and reduce costs. Therefore, we question the value of Assessment Review changes for seemingly insignificant amounts. Has CRA determined the costs to issue a reassessment, and considered a de minimis amount below which no reassessment would be issued, on the basis that the cost to proceed with a letter and/or reassessment exceeds the tax at stake? At present, balances of less than $2 are neither collected nor refunded. We note that Alberta Finance will not collect or refund balances less than $20.

As an example, a recent CRA review of a substantial medical claim involving about 100 receipts identified five official prescription receipts for over-the-counter drugs, disallowed $33 of expenses and assessed about $10 of additional tax. The overall claim was significant, and the review unsurprising. Our concerns relate to the magnitude of tax reassessed.

a) Has CRA considered whether the $2 threshold for refund or payment should be increased?

CRA Response:
Subsections 161.4(1) and (2) of the *Income Tax Act* (ITA) provide the legislative authority for our $2 threshold for refunds or payments, and it reads as follows:

161.4

(1) Taxpayer. If the Minister determines, at any time, that the total of all amounts owing by a person to Her Majesty in right of Canada under this Act does not exceed two dollars, those amounts are deemed to be nil.

(2) Minister. If, at any time the total of all amounts payable by the Minister to a person under this Act does not exceed two dollars, the Minister may apply those amounts against any amount owing at that time, by the person to Her Majesty in right of Canada. However, if the person, at that time, does not owe any amount to Her Majesty in right of Canada, those amounts payable are deemed to be nil.

A change to this threshold would require a change to the legislation, which is a tax policy matter that is the responsibility of the Department of Finance.

b) Would the CRA consider establishing a similar de minimis amount for reassessments? We acknowledge this would reasonably apply to both increases and decreases to tax.

CRA Response:

With respect to your concern about the cost to issue a reassessment, the CRA strives to balance the appropriate level of service with costs of providing that service. Our current service standards provide for a balance between reasonable time frames and reasonable cost throughout the year. In addition, the Agency is committed to continuous improvement of its processes.

There are however, certain situations where the CRA will reassess returns regardless of the tax difference for the year being reassessed in order to update our records (tuition or loss carry-forward amounts, for example). There are also situations where, because the reassessment would not result in any tax difference, the CRA will issue a "no adjustment" letter rather than issue a nil assessment, which saves costs.

For our taxpayer requested reassessment program, notwithstanding the above noted circumstances, the CRA will generally complete allowable reassessments as requested by the taxpayer or representative.

For our review programs, there are steps taken to ensure that minimal amounts are avoided and that discretion is used when minor discrepancies are identified. We will consider your comments during our discussions with our field operations.

3. High Net Worth Audit Initiative

In 2004, CRA launched a pilot project to examine the tax compliance with certain high net worth individuals (HNWI) and their related entities. In 2009, CRA formalized the Related Party Initiative (RPI) and integrated it into the operations of the International and Large Business Directorate, Compliance Program Branch. Can the CRA at this time report on the results of the initiative? Specifically:

a) Can the CRA at this time define its criteria for a "high net worth individual"?

CRA Response:

For the purposes of the Related Party Initiative, a high net worth individual is one who:

- together with associates controls a minimum net worth of $50 million;
- grouped in approximately 30 or more economic entities; and
- is not already covered by the CRA's Large Business Audit Program.

An “entity” can be any economic structure including an individual, corporation, trust, partnership, foundation, or a joint venture.

b) Can the CRA comment on the consistency of its form(s) and methodology? For example, in the first step of the audit process, we are aware that the CRA asked selected individuals to complete a detailed questionnaire. But it appears that some received a 20 page questionnaire while others received a 21 or 22 page questionnaire (there may indeed be many variants, but please note this is a rather simple parameter), and that is just the first of several questionnaires. Was the definitive form and content of the questionnaire(s) the subject of a coordinated design process, and was it ever finally determined?

CRA Response:

The CRA makes available to auditors a variety of forms and templates in order to facilitate the audit process. For example, the Income Tax Audit Manual offers a variety of template letters applicable at the conclusion of an audit, depending on the outcome of the audit.

At the beginning of a Related Party Initiative review, we issue a questionnaire to each of the key individuals in the group. The original questionnaire we designed was used until March 2012 and contained about 20 pages, but may have numbered more pages depending on the printer used. This questionnaire is not an official form for public use, but rather a tool intended to assist with the review. Auditors are permitted to tailor the questionnaire to better suit their target audience, which may account for variances in the length of the questionnaire received by any particular individual.

It should be noted that a working group collaborated in the development and review of the revised questionnaire utilizing the original questionnaire as their starting reference. This review process culminated with the adoption of an updated version in April 2012.

The revised questionnaire is 15 pages long but can vary depending upon the taxpayer under review.

Your question mentioned that this questionnaire is just the first of several questionnaires. We have only one questionnaire designed for use with Related Party Initiative audit review, but it is possible that auditors may pose additional questions in the form of a letter, questionnaire, or query sheet throughout the course of the audit review. Such inquiries may be questions developed by the auditor specifically for the audit at hand or may be standard questions developed in conjunction with a specific issue relating to the audit.

c) Can the CRA confirm that, since the information is voluntarily given and asks, for example, for taxpayers to estimate valuations of often illiquid private company investments, no information provided could/should be construed as a “misrepresentation” for the purposes of subsection 152(4) of the ITA?

The questionnaire asks individuals to disclose all of their interests in private companies, private trusts, partnerships and joint ventures, along with their personal bank accounts and investment holdings, both domestic and foreign. Individuals are also asked to provide an organizational chart portraying the relationships between themselves and these interests and investments. Individuals may be given as little as 30 days to complete the questionnaire and provide documents. Along with this questionnaire, the CRA has sent another detailed list of questions intended to evaluate the company’s computerized accounting systems to identify the electronic files the CRA would request as

part of the audit.

Such requested documentation may often relate to transactions undertaken years or sometimes decades ago. Companies that have been wound up, liquidated or been the subject of bankruptcy proceedings may also be included in the documentation requested. Accordingly, could the CRA please comment on how taxpayers could reasonably be expected to respond with such information?

CRA Response:

The Related Party Initiative undertakes a comprehensive review of the high net worth individual's economic interests. The updated questionnaire was designed to support this review by asking for information and documents that are not ordinarily filed with the CRA. It is issued pursuant to subsection 231.1(1) of the *Income Tax Act*.

The information and documents requested in the questionnaire form part of the books and records that a taxpayer is required to retain under subsection 230(1) of the *Income Tax Act*. In most cases the information requested should be reasonably current, given the CRA's policy on currency of audits and the statutory limitations on years that may be reassessed. It is possible that circumstances will arise where it becomes necessary to obtain old information, as for example where there is a need to determine the adjusted cost base of shares that have been held by a shareholder for a long period of time.

Related Party Initiative audits are assigned to a Large File Case Manager in our Large Business Program. If in a particular instance you have concerns about your ability to access the information and documents requested in the questionnaire, or meeting the deadline to respond to such a request, we encourage you to discuss the situation with the Large File Case Manager in charge of the audit.

We are unable to provide a conclusive response to your enquiry regarding misrepresentation under subsection 152(4) of the *Income Tax Act*. The standard of care applicable to responses provided to the questionnaire is no different from that applicable to any other request made under subsection 231.1(1) of the *Income Tax Act*. Whether any deficiency in the information provided is sufficient to constitute misrepresentation for the purposes of subparagraph 152(4)(a)(i) can only be ascertained from a thorough review of the specific facts that led to the deficiency.

It was indicated that along with the Related Party Initiative questionnaire the CRA also issued a questionnaire regarding the taxpayer's computerized accounting. Please note that this added questionnaire may be issued, or similar questions discussed, on any file where computerized accounting records exist and does not pertain solely to Related Party Initiative audits. This information is required by our Electronic Commerce Audit Section in order to secure the download of electronic records.

4. Penalties and Taxpayer Relief and Penalty Reports

a) The subsection 163(1) penalty for repeated omissions of income has been widely criticized for its excessive application. A number of judges, at various levels of the Courts, have questioned whether it is disproportionate in many cases. As an example, *Knight* 2012 TCC 118 saw the Tax Court suggest that the taxpayer should apply for taxpayer relief and that "*If such an application is made I hope that the Minister will seriously consider substantially reducing the federal and provincial penalties to an*

amount very significantly less than the $3,863.92 balance owing, apart from the penalties, at the time of the reassessment adding the omitted amounts." Given the above, we have the following questions:

(i) Under what circumstances would CRA consider it "just and equitable" that a taxpayer is penalized more for an honest error than for gross negligence or wilful default? How often would CRA consider it "just and equitable" to waive a portion of the S 163(1) penalty such that the taxpayer's penalty does not exceed 50% of the benefits which the omission would obtain, the level set by the S 163(2) penalty?

(ii) Would CRA accept a representation by the taxpayer that he was indifferent as to his compliance with his tax obligations and assess a gross negligence penalty under S 163(2) in lieu of the S 163(1) penalty?

b) At the completion of an audit, where the CRA auditor has concluded that adjustments are required, the taxpayer will receive a letter outlining the basis for the adjustments. Some proposal letters also advise the taxpayer that the CRA is considering penalties pursuant to subsection 163(2). In order to respond to the auditor's findings, a penalty report is needed so the taxpayer can prepare an adequate response to the proposed imposition of gross negligence penalties. The period to reply to a proposal letter is often limited to 30 days, so a taxpayer needs immediate access to the report in order to respond within the deadlines imposed. Some taxpayers are being asked to make submissions regarding penalties without being provided with a copy of the penalty report. This results in shifting the burden of proof regarding penalties to the taxpayer. The Courts have made it very clear that the burden of proof resides with the Minister (Lacroix v. Canada, 2008 FCA 241). Can the CRA comment on the following:

(i) At what stage during the audit process is the penalty report prepared?

(ii) Does the CRA require the auditor to complete a penalty report before advising the taxpayer that penalties are being considered?

(iii) What is the CRA's policy regarding providing the taxpayer with a copy of the penalty report?

(iv) Is the penalty report required to be provided to the taxpayer prior to submitting the file for reassessment?

(v) How much time does the CRA typically provide to the taxpayer to respond to a penalty report?

(vi) Does the CRA agree that taxpayers should not be asked to make submissions regarding penalties prior to being provided with a copy of the penalty report?

(vii) What is the proper procedure for obtaining a copy of the penalty report?

CRA Response:

Subsection 163(1) imposes a penalty in cases where a taxpayer has failed on more than one occasion to report an amount required to be included in income over a four year period. Statutorily, a repeated failure to report income is enough to warrant the imposition of a penalty under subsection 163(1).

In considering the application of a 163(1) penalty, if a taxpayer had previously filed a return in one of the three tax years preceding the year under audit, for example, and failed to include an amount, a penalty could be assessed with respect to an omitted amount in the year under audit. However, the courts have found, in cases such as *Dwayne N. Franck v. HMQ* 2011 DTC 1142 (TCC), that the subsection 163(1) penalty it is a strict liability offense and therefore a due diligence defense is available. The CRA accepts that a taxpayer will not be subject to the penalty under subsection 163(1) if the taxpayer can show that he or she was duly diligent.

The CRA does not routinely afford taxpayers the opportunity to make submissions on due diligence before a subsection 163(1) penalty is assessed. However, at the objection stage, CRA Appeals will consider all the facts and circumstances related to a due diligence representation. Consideration will not be given to waive a portion of the penalty as either the entire amount or no amount will be waived. We will continue to apply a subsection 163(2) penalty where there is gross negligence, regardless of the quantum. Where a 163(2) penalty is applied, no 163(1) penalty is applicable.

It is worth noting that whether the imposition of the penalty is “just and equitable” in comparison to the amount that would have been charged under subsection 163(2) for the same omission is a tax policy matter that is the responsibility of the Department of Finance. It is our understanding that the matter has been brought to their attention. Making changes to the penalty structure falls under their responsibility.

A report is required to be filed where a subsection 163(2) penalty is applied, as the onus is on the CRA to prove that the taxpayer knowingly or under circumstances amounting to gross negligence made a false statement or omission in a return. The proposal to apply subsection 163(2) penalties forms part of the proposal letter for audit adjustments and the taxpayer has the opportunity to make representations as they do with respect to audit adjustments themselves. The auditor must fully apprise the taxpayer, whether in writing or otherwise, the reason(s) for the application of the penalty and the taxpayer should be given the opportunity to respond to such reason(s). Normally, a taxpayer or their representative would receive 30 days to respond to such proposed adjustments and/or the application of penalties.

The penalty report is prepared and approved after taxpayer representations have been properly and thoroughly considered, if a decision is made to apply 163(2) penalties. A copy of the penalty report is not generally provided.

An excerpt from the Audit Manual is provided below for further reference.

> ***Chapter 28 Audit issues (28.4.8) Burden of Proof***
> *In no case is a penalty to be applied without the taxpayer first being advised in writing that a penalty is being considered. For a sample letter, go to A-11.1.7, Proposal letter with gross negligence penalty.*
>
> *The auditor should try to rebut each point raised by the taxpayer for not applying the penalty. In addition, the auditor must decide if the taxpayer's explanation is plausible and if it is consistent with the facts of the case.*
>
> *The facts used to substantiate the penalty should be sufficient to rebut any assertion that the false statement in a person's return was made*

innocently and unintentionally, having regard to the taxpayer's business, profession, knowledge and experience in tax matters.

5. Electronic Filing

At the June 30, 2012 deadline for filing returns for December 31, 2011 corporate year-ends, CRA's website appeared overwhelmed. Returns required multiple attempts to successfully EFILE, and the system became completely unavailable on June 29. CRA provided an extension to the EFILE deadline for returns due on June 30 provided they were transmitted no later than midnight July 6, three days after the technical deadline of July 3. This message was sent to EFILE transmitters and location leaders on the morning of July 3, and posted on CRA's website at an unknown, presumably earlier, time.

It is difficult to see how CRA could have reacted more quickly to this service disruption. However, taxpayers were left with considerable uncertainty during this period. Many corporations, and now tax preparers, are subject to penalty for paper filing. A similar situation requires the difficult choice of filing late or filing in the wrong format, with either approach attracting a penalty. While we would expect CRA would waive any penalties under the Taxpayer Relief provisions, there is a cost to applying for such relief, so this does not provide a satisfactory solution.

a) Can CRA provide some insights as to the cause of the June 2012 problems? What steps will CRA take, or have already been taken, to ensure this will not recur, and to ensure its systems are able to handle the transmission load at the busiest times of the year (i.e., late April and late June)?

CRA Response:

The outage that occurred in June 2012 to our Corporation Internet Filing (CIF) service was an isolated case and was not caused by high volume processing.

The CRA uses various methods to ensure the security of our system and the integrity of taxpayer information sent through the CIF service, including:

- monitoring capacity
- using the highest level of encryption
- no outside access to taxpayer information or sensitive data.

With these measures in place, we are very confident in our system's ability to provide secure and efficient processing of T2 returns at all times of the year.

b) What action would CRA advise taxpayers and their representatives to take if/when the EFILE system becomes unavailable in close proximity to their filing deadlines? Would CRA consider publishing a policy which will apply in respect of future service disruptions, such as a commitment to extend the deadline similar to the June 30, 2012 extension, to provide greater certainty?

CRA Response:

We strive to ensure our systems are available 22/7 (22 hours per day / 7 days per week). However, we will encounter system issues from time to time and we do bring our systems down for regular maintenance. Should we experience an unplanned system outage, we do take into account the impact an outage may have on filers (i.e., the time of year it occurs). Our preference is for filers to make use of our electronic services once service is restored. If we foresee an extended outage, we will communicate our plan with the public. The plan would typically include messages indicating if we want them to use non-electronic services or continue to wait for

services to be restored, if we plan to waive or cancel penalties and/or interest, and other pertinent messages applicable to the situation.

However, if an error message is encountered while using Corporation Internet Filing (CIF), the taxpayer or their representative should call the CIF Helpdesk and inform them of the error message. This would assist the Helpdesk in finding the cause of the underlying problem. If the agent is unable to resolve the problem, or if there is a disruption in the CIF service, the agent can provide additional information as warranted.

We have seen several instances where corporate or personal requests for carry back of claims such as losses and investment tax credits to prior years have not been processed. The forms reflecting such requests would not be on CRA's files as the return was filed electronically. Given the increasing requirements for mandatory electronic filing, this is a significant concern for taxpayers and their advisors, especially as there is no reassessment of the prior year absent the loss application, so the taxpayer has nothing against which to file a Notice of Objection.

c) Can CRA confirm this information is received in the electronic filing process, and advise of what steps are being taken to ensure these requested adjustments are processed? Have any recent changes been made in this regard?

CRA Response:

From a T2 perspective, all adjustment requests for carry-backs are entered on schedules which are available on tax preparation software and are included with the submission of a T2 return. We can confirm these applications are received and we are unaware of any problems processing such requests. We suggest that if carry-back requests are not being processed in a timely fashion the representatives contact the business processing area of the local Tax Centre of record to investigate.

d) Will CRA provide any relief for the new penalties for paper filing under Subsection 150.1(2.3)? If so, please provide details. What is CRA's process and timeline for assessing these penalties now that the requirements apply?

CRA Response:

The CRA is sensitive to the administrative and financial burden associated with new legislative requirements. We are focusing on education and communication for the new requirements for tax years ending in 2013.

e) Can CRA provide information as to criteria used when sending out EFILE Suspension letters? For example, are small penalties or tax payables grounds for Suspension? CRA also refers to an "unacceptable cumulative error rate." What does this mean?

CRA Response:

Any request for relief of this penalty should be directed to one of our Taxpayer Relief Centres using form RC 4288 (Request for Taxpayer Relief).

The list of screening criteria used to determine what action we take on any EFILE account is shown on the EFILE website at http://www.efile.cra.gc.ca/l-scrn-eng.html. We also have information on our website regarding various conditions for suspension after an EFILE account has been certified at the following address: http://www.efile.cra.gc.ca/l-sspnd-eng.html .

Information about tolerances for debts or amounts for penalties are not publicized in order to protect the integrity of our EFILE screening program.

6. Clearance Certificates

The issuance of Clearance Certificates, applied for under Subsection 159(2), has slowed significantly in recent years. Advisors report mixed results, some noting the process often taking two years—including one file which has been ongoing for eighteen months with no sign of any progress—while others report the turnaround has improved, with one report of a substantial Estate receiving the Certificate in about three months. Of course, delays impose financial costs and uncertainties on all concerned. Can the CRA provide some insights on the following:

a) What are the current wait times for issuance of the Clearance Certificates?

CRA Response:

The service standard for Clearance Certificates (CC) is to address 80% of CC requests within 120 days. If there are audit issues, the processing of the Clearance Certificate may take more than 120 days. Audit issues may require more time as those situations depend on the cooperation of the taxpayers and their representatives and on the complexity of the issue, which may result in the involvement of other CRA program areas such as the Business Equity Valuation and/or the Real Estate Appraisals.

b) Has the CRA taken any recent steps to expedite the process, and/or are any steps being planned or considered?

CRA Response:

The CRA is currently working on streamlining the process to expedite the processing of these requests by improving internal efficiencies. For example, revised guidelines have been issued and the program is being reorganized in certain regions.

With increased volumes in some offices, CRA has undertaken the hiring of additional employees to assist in the processing of this additional workload.

c) What can we, as advisors, do to help this process function efficiently and effectively? Can the CRA provide examples of “best practices” in applications for Clearance Certificates and/or identify common issues or deficiencies in the applications, or the underlying filings, which delay this process?

CRA Response:

Your assistance can reduce wait times in many cases:

- Do not send the request until you have:
    - filed all the required tax returns,
    - received the related notices of assessment,
    - remitted or secured all income taxes (including the provincial or territorial taxes that the CRA administers), Canada Pension Plan contributions, employment insurance premiums, and any associated interest and penalties.

- Attach all the necessary documents listed on the form TX19 and the CRA web pages (links provided below):

  http://www.cra-arc.gc.ca/ebci/cjcm/srch/bscSrch?lang=en&bscSrch=Clearance+Certificate&cn-search-submit=%C2%A0Go%C2%A0

  http://www.cra-arc.gc.ca/tx/ndvdls/lf-vnts/dth/clrnc-eng.html?=slnk

  http://www.cra-arc.gc.ca/tx/bsnss/tpcs/lf-vnts/clrnc-eng.html?=slnk

  http://www.cra-arc.gc.ca/E/pbg/tf/tx19/tx19-12e.pdf

  http://www.cra-arc.gc.ca/E/pub/tp/ic82-6r9/ic82-6r9-11e.html

- Any additional information requested by the CRA should be provided without delay. If you do not respond to a request for information within 30 days, the CRA will close the file without issuing a clearance certificate.

Please provide information to the CRA on the files which have been ongoing for extended periods of time with no sign of any progress. It will enable the CRA to look into the status of these files, find the reasons, and develop and implement solutions to improve the service standards.

ADDITIONAL QUESTIONS

7. T5013 Partnership Information Return T5013

A question similar to this one was asked at the 2012 ICAA/CRA Roundtable but to date a written response has not been provided and the issue is of concern. The revised version of Schedule 50 *Partner's Ownership and Account Activity* of the revised T5013 *Partnership Information Return* reports adjusted cost basis (most recently revised in and for 2011 and subsequent). Practically, many partnerships have been completing the revised Schedule 50 using the "inside basis" (information known to the partnership). If a partner has disposed of its partnership interest to a new partner, the partnership will not necessarily know the new partner's adjusted cost basis.

Schedule 50 is not provided to the partners. If one of the objectives of having partner ACB reported on Schedule 50 was to provide this information to partners, then this objective is not being met and Schedule 50 does not seem to be relevant.

a) Does the CRA agree with the comments above?

b) If yes, will the CRA consider revisions to Schedule 50?

CRA Response:

In February 2012, the CRA issued a revised version of the Partnership Information Return (T5013). A key change was to Schedule 50 of the T5013 return, which now requires information on adjusted cost base (ACB) and at-risk amount (ARA) calculations for partners.

We recognize the challenges partnerships and tax preparers might face in meeting these new obligations, and therefore we are in the process of revising the Schedule 50. We are expecting to release the new schedule in the fall of 2013.

We will accept returns filed by the due date if they contain the 2011 version (used for the tax years 2012 and 2013) of Schedule 50 with complete information on partner identification and the annual transactions between partners and the partnerships.

Also, please refer to the written response provided recently to the ICAA for a similarly worded question posed at the 2012 Conference (Question 14).

8. T4A Issue

Questions regarding proper completion of T4A information slips have been asked at previous CRA/ICAA Roundtables. We were recently advised by a CRA auditor that a not-for-profit client was required to issue T4A slips for payments made in exchange for services provided by independent contractors to the not-for-profit organization.

Services provided by independent contractors can only be reported in Box 48 of the T4A information slips. The current guide RC4157 includes a note stating "Until we identify the types of fees for services that are to be reported on the T4A slip, taxpayers will not be penalized for failing to complete box 048."

a) Can CRA provide any more guidance with respect to the types of fees for services to be reported on Box 48 of the T4A slip?

b) Will taxpayers be penalized for failing to complete Box 48 until further clarification is obtained from CRA?

c) We are wondering specifically why an auditor would request T4A slips in the above circumstances and whether or not a penalty would be assessed if the client chooses not to issue T4A slips?

CRA Response:

With regard to the completion of T4A slips, payers have indicated uncertainty regarding what types of fees for services should be reported, and where on the T4A slip the amount should be reported. Due to this confusion, the CRA announced a temporary moratorium on penalties for failing to correctly complete Box 048 – Fees for Services. However, this moratorium does not absolve payers of the responsibility to report these payments. Canada's tax system is a self-assessment system based on voluntary compliance, and the CRA expects that businesses will comply with their obligations. If, during regular compliance review activities, reporting oversights or errors are found (for example, T4A slips have not been issued where required), the CRA will require that they be completed. Where a payer chooses to remain non-compliant, penalties may be considered.

9. Joint Ventures

As an accountant working directly with small businesses, we are running into practical difficulties with certain joint ventures. Typically, these joint ventures maintain the detailed records. In cases where the venturers have multiple year ends, it is often neither practical nor cost effective for the joint venture to provide monthly financial reporting that is adequate for tax filings of all venturers. The CRA has indicated

they will not allow a joint venturer to use a formula-based accrual similar to a partnership (document 2011-431271E5), and will require actual revenues and expenses for the venturer's fiscal period be reported.

Practically, many joint venturers will have no option but to make estimates of their revenue and expenses for the period from the last joint venture reporting to their own year-end. They will have limited, if any, precise data for that period. Even where data subsequently becomes available at a later date, the administrative burden to both the taxpayer and the agency of filing and assessing annual adjustments seems excessive, especially where these adjustments may be for limited amounts. Will the CRA accept best estimates based on the limited information available to the joint venturer? It seems unlikely that a more accurate determination of the relevant revenues and expenses can reasonably be made by the venturers.

CRA Response:

As a result of the 2011 Federal Budget proposals to eliminate the deferral of income from partnerships, the CRA announced the withdrawal of the joint venture administrative policy that allowed a joint venture participant to have a different fiscal year end than that of the joint venture.

Income Tax Rulings (Rulings) Document # E2011-0429581E5 describes the new administrative policy for joint ventures. Limited transitional relief is available with respect to incremental revenue that arises as a result of the revised policy. The five year reserve, similar to the transitional relief available for partnerships, is available. However, the revised policy does not provide for a formulaic approach to compute stub period income for joint venture participants. The formulas, which apply to partnerships only, provide for a computation of estimated income for the stub period based on a pro-rated amount of income that was allocated from the partnership for the fiscal period of the partnership that ended in a partner's taxation year.

A consultation process was undertaken in which consideration was given to the formulaic approach for participants of joint ventures, but due to tax policy issues and administrative difficulties it was decided that this approach was not practical. Therefore, the CRA position, as described in *Rulings Document # E2011-0431271E5*, is that for taxation years ending after March 22, 2011 actual income earned through joint ventures is required to be calculated by each participant taxpayer based on the fiscal period of the particular taxpayer.

10. TFSA Audit Project

We understand that in some cases CRA has assessed or proposed to assess holders of TFSAs to a 100% advantage tax based on the increase in the value of the TFSA during certain years. We understand that in some of those cases, CRA has also assessed or proposed to assess the TFSA itself to tax on its trading gains on the basis that its trading activities constitute a business that is taxable even in the TFSA. Finally, we understand CRA has, in some cases, proposed or assessed a penalty equal to the value of the TFSA, not the value of the advantage. Assuming our understanding is correct (and please correct our understanding if it is not), our questions are as follows:

a) In what circumstances would CRA consider it appropriate to assess a penalty equal to the value of the TFSA itself, rather than the advantage? What is CRA's technical basis for such an assessment?

CRA Response:

Pursuant to subsection 207.05(1) and (2) of the *Income Tax Act* (ITA), an advantage is taxed at 100%. Subsection 207.06(2) provides the Minister with the authority to waive or cancel all or part

of the liability where the Minister considers it just and equitable to do so. In circumstances where the advantage has reduced in value due to open market transactions, we have considered it just and equitable to impose a tax equal to "the value of the TFSA itself" instead of the original higher advantage amount.

b) Can CRA explain the criteria it has applied in determining whether a transaction or event or a series of transactions or events would not have occurred in an open market in which parties deal with each other at arm's length and act prudently, knowledgeably and willingly?

CRA Response:

The determination of whether a transaction or event or a series of transactions or events would not have occurred in an open market in which parties deal with each other at arms-length and act prudently, knowledgeably and willingly is a question of fact that can only be concluded following an assessment of all of the facts relating to the taxpayer's particular circumstances. It is the CRA's position that a TFSA trust and its holder do not deal at arm's length. Consequently, transactions between a TFSA and an RRSP held by the same holder, directly or indirectly through a third party, to consistently realize losses in the RRSP and gains within the TFSA is indicative of a non-arm's length situation.

c) In draft legislation announced on December 21, 2012, the Department of Finance proposed to introduce legislation to amend the definition "advantage" to replace the words "in an open market" with the words "a normal commercial or investment context." Is CRA prepared to apply the definition "advantage" on the basis that the proposed amendment is in effect?

CRA Response:

The CRA is applying the definition "advantage" on the basis that the proposed amendment is in effect.

d) It seems unduly punitive to assess a TFSA holder to a 100% advantage tax on the growth in the value of the TFSA, and at the same time to assess the TFSA to tax on the trading gains it has realized, when the growth in the trading gains are essentially the same. This amounts to a tax of close to 150% on the trading gains. Could the CRA comment on this please?

CRA Response:

Our assessing position in this situation is to waive a portion of the advantage tax equal to the Part 1 tax paid on the trading gains such that the total tax on the same transaction will not exceed 100%.

11. Price Adjustment Clauses

Income Tax Folio S4-F3-C1, released March 28, 2013, contains the CRA's administrative position with respect to price adjustment clauses (PAC). One of the conditions prescribed by the CRA so that the price adjustment clause is recognized is that the value for the purposes of the agreement has been established by a fair and reasonable method.

CRA has indicated it is not necessary to engage a valuation expert to prepare the valuation, and that a complete examination of all the relevant facts would be required to determine whether the parties have used a fair and reasonable method to determine the FMV of a property. However, the Folio also indicates

"It is also necessary that the valuation method be properly applied having regard to all the circumstances."

a) It seems likely few professionals who are not valuation experts will consider themselves qualified to assess the proper application of valuation principals, especially where operating businesses are involved. Can the CRA comment on how they would assess this, from the perspective of accepting or rejecting a PAC? Are there circumstances where CRA would consider the lack of a valuations expert indicative that reasonable efforts to determine the value were not made?

CRA Response:

A valuation analysis should be prepared by someone having sufficient knowledge and experience in the field of business equity valuation, including knowledge of the standards and principles of the valuation profession.

b) The Institute of Chartered Business Valuators has three levels of valuation reports that may be issued, being a Comprehensive Valuation Report, an Estimate Valuation Report and a Calculation Valuation Report. A Comprehensive Valuation Report provides the highest assurance and the Calculation Valuation Report provides the lowest. Given that a CBV need not be engaged to determine the value of the transferred property, would the CRA agree that the level of the report selected would not be a factor in assessing whether the value is determined in a fair and reasonable method? If not, what level of report would CRA consider to be required? What factors would the CRA consider in this regard?

CRA Response:

We would agree that the level of report, Comprehensive, Estimate or Calculation, prepared by a Chartered Business Valuator (CBV) would not necessarily be a factor in assessing whether the value is determined on a fair and reasonable basis. The difference between the types of reports is the level of assurance provided by the CBV and therefore the amount of independent verification that is performed on the information provided. As long as the information provided by the taxpayer is complete and accurate, it should not have an effect on whether a fair and reasonable method is used and applied correctly.

c) Can the CRA comment on the criteria presently applied in assessing whether a valuation method meets their standard for being a fair and reasonable method? We would be especially interested in any factors which frequently cause CRA to conclude this criteria has not been met and, if practical, an assessment of the frequency with which this standard is, or is not, met. As well, can the CRA advise whether reports by expert valuators have been more successful in meeting the set criteria, and whether there appears to be any variation in this regard based on the type of report? We appreciate statistics in this regard may not be available, but any insights you can offer would be valuable.

CRA Response:

To determine whether a price adjustment clause (PAC) is acceptable, the valuation analysis would be examined by a regional business equity valuation section. *Information Circular IC-89-3*, *Policy Statement on Business Equity Valuations* provides guidance on the valuation of business equities and outlines the importance of understanding and applying the concept of fair market value. It also proposes different acceptable approaches to value. The appropriate approach to value must also be applied correctly. In all cases, it will be a question of fact that will determine whether a reasonable effort has been made. Many factors, including the size of the difference in

fair market value determinations, the nature of the business, and the industry in which the business operates, will be considered when determining whether a fair and reasonable method has been used.

12. Section 85 Rollover

Some members are advising that the CRA is reviewing and asking questions more frequently about filed Section 85 elections than has been the case in the past. Would the CRA comment upon the review process that it undertakes with respect to Section 85 elections that are filed?

CRA Response:

Locally, the CRA has increased the compliance review of T2057 elections filed (prescribed under Section 85 of the ITA). One reason is that the CRA noticed that some taxpayers are filing T2057 elections with an agreed amount greater than adjusted cost base of properties transferred and yet not reporting the corresponding capital gain or income, as applicable, on their personal tax return. The review noted that some taxpayers seem to be not aware of subsection 110.6(6) – failure to report capital gain. This subsection permits the CRA to deny the capital gains exemption under certain circumstances if a capital gain is not reported.

Another reason for increased review of T2057 elections is due to the paid-up capital (PUC) of the shares taken back by taxpayer. Due to the fact that the PUC may be extracted from a corporation tax-free, a close examination of PUC is important. The CRA also noted that the T2057 election is being utilized to transfer the capital interest in a partnership among related Canadian corporations. The CRA Aggressive Tax Planning section is increasing the review of these particular elections.

Note: The response was prepared by a local TSO based on a sample of section 85 elections received.

13. Variation of a Trust

It is possible to transfer property on a rollover basis to certain types of trusts, such as a spousal or common-law partner trust, an alter ego trust or a joint spousal or common-law partner trust. In order to qualify as such type of trust, certain conditions are required under the *Income Tax Act*. These conditions normally only permit the payment of income and distribution of capital to certain beneficiaries. For example, in a spousal or common-law partner trust, a distribution of capital may be made only to the spouse during his or her lifetime, and in an alter ego trust a distribution of capital may be made only to the settlor during his or her lifetime.

It is possible that a property to which a rollover provision applies is transferred to a qualifying trust on a rollover basis and, some years later, the terms of the trust are varied such that it is possible to pay income and/or capital to other beneficiaries. Would the CRA comment upon the tax consequences of such variation in respect of:

a) the initial transfer of property to the trust that occurred on a rollover basis;

b) any tax consequences with respect to property held by the trust at the date of the variation; and

c) any tax consequences with respect to the existing beneficiary of the trust with respect to that person's interest in the trust at the date of the variation.

CRA Response:

Two of the conditions required to qualify as a testamentary spousal or common-law partner trust under subsection 70(6) of the *Income Tax Act* are that the beneficiary spouse or common-law partner must be entitled to receive all the income of the trust during their lifetime, and no person except the spouse or common-law partner may receive or otherwise obtain the use of any of the income or capital of the trust during his or her lifetime. Similar conditions exist for the following inter vivos trusts:

- for an inter vivos spousal or common-law partner trust see subparagraph 73(1.01)(c)(i);
- for an alter ego trust, see subparagraph 73(1.01)(c)(ii); and
- for a joint spousal or common-law partner trust, see subparagraph 73(1.01)(c)(iii). Only the settlor and the spouse or common-law partner of the settlor are entitled to the income and capital of the trust during their lifetimes.

We are not in a position to give a definitive response as to the tax consequences regarding variations of trusts as this would involve a review of the actual trust documents and a finding of fact. However, we offer the following general comments, which are not meant to be exhaustive.

The requisite conditions related to the beneficiaries' income and capital entitlements must be met upon the establishment of the trust. This will be a question of fact to be determined on the basis of the unique facts in a given case.

Whether a variation to a trust is so significant so as to cause the trust to be resettled or a new trust to be created is a question of fact.

Subsection 108(6) provides that where at any time the terms of a trust are varied, for the purposes of the deemed disposition rules in subsections 104(4), (5) and (5.2), the trust is deemed to be the same trust as, and a continuation of, the trust immediately before the variation. As a result, a trust is not considered to have been newly created for the purposes of the 21-year deemed realization rule by virtue of a variation.

Additionally, depending on the type of trust, subsection 104(6) will deny the trust a deduction for income distributed to persons other than the settlor and/or settlor or common-law spouse while one or both are alive. Paragraph 104(6)(b) will deny the trust a deduction for any portion of the taxable capital gain related to a deemed disposition under paragraph 104(4)(a).

Subsection 107(4) will apply where property of the trust is distributed by a spousal or common-law partner trust to a beneficiary other than the spouse or common-law partner beneficiary during the spouse's lifetime, by a joint spousal or common-law partner trust to a beneficiary other than the settlor, spouse, or common-law partner beneficiary during the lifetime of the settlor, spouse, or common-law partner, or by an alter ego trust to a beneficiary other than the settlor during his or her lifetime. As a result, subsection 107(2.1) will apply where property has been distributed to a beneficiary in satisfaction of all or any part of the beneficiary's capital interest. The trust will be deemed to have received at the time of the distribution proceeds equal to the property's fair market value.

A change in the beneficiaries' income and capital entitlements made by way of an agreement to a variation in the terms of the trust may be viewed as a disposition by the existing beneficiaries of all or a part of their interest in the trust. Where an existing beneficiary assigns or disposes of an income interest (as defined in subsection 108(1) of the *Act*) in a trust, the beneficiary will be subject to subsection 106(2), if subsection 106(3) does not apply. Paragraph 106(2)(a) provides that unless the disposition results from a distribution of property by the trust, the taxpayer's proceeds of disposition are included in computing the taxpayer's income for the year that includes the disposition. Where the disposition is not at arm's length, and the proceeds are less than fair market value, paragraph 69(1)(b) of the *Act* will deem the beneficiary to have received proceeds equal to the fair market value of the interest. Where the beneficiary disposes of all or any part of a capital interest in the trust, the rules in subsection 107(1) apply. Section 69 may also apply.

Where the variation of an existing trust is being contemplated, a taxpayer may consider requesting an Advance Income Tax Ruling as discussed in *Information Circular IC 70-6R5*.

14. Testamentary Trusts

Document 2011-0430261E5 posited three spousal trusts created under the will of a deceased person, with the residual beneficiaries under each trust being a different child of the taxpayer. CRA indicated these would likely be deemed a single trust. Document 2004-0090941E5 indicated that three trusts, with each having a different child as a beneficiary, would not likely be so deemed. The difference appears to be the widow(er), a beneficiary in common. Document 2011-0430261E5 seems much more definitive than past interpretations (for example, documents 2004-0090941E5 and 9M19190, Question 8) in setting out CRA's views on the designation of multiple trusts to be a single trust, under Subsection 104(2).

a) Has CRA's approach or interpretation changed? What circumstances are considered relevant in determining whether this provision would be applied?

b) In the scenario presented in Document 2011-0430261E5, would CRA accept a single spousal trust, the residue of which is to be divided into three separate trusts, one for each of the three children of the deceased (i.e. the situation in 2004-0090941E5 implemented after death of the survivor spouse), referred to as "residual trusts" herein, or would CRA consider that the residual trusts would still properly be deemed a single trust in perpetuity?

c) Assuming CRA would consider the residual trusts in (b), above, to properly be separate trusts, would they also consider the three trusts created under the will in Document 2011-0430261E5 to cease to be deemed to be a single trust on death of the survivor spouse?

CRA Response:

As stated in document 9M19190, the determination of whether the trusts have been structured so that their income accrues to the same group or class of beneficiaries is a question of fact. The applicability of subsection 104(2) of the *Act* and the relevance of the various facts will be determined mainly in light of its object, which is to prevent a beneficiary, group or class of beneficiaries from being allowed to split income by using various trusts for the same beneficiary, group or class of beneficiaries. We do, however, recognize that often with respect to family and estate planning there may be legitimate non-tax reasons for wanting to keep the interests of specific family members separate. All these factors will be considered when determining whether

several trusts will be considered one individual for the purposes of the *Act*. In general, it is our opinion that the discretion in subsection 104(2) of the *Act* would not be exercised in a situation where a testator creates a separate trust for each of his or her children. In addition, we comment specifically on each question as follows:

(a) CRA's approach has not changed. For the purposes of determining whether the discretion in subsection 104(2) of the Act would be exercised, certain criteria are examined, including but not limited to:

- whether there was a clear intention to create separate trusts, according to the provisions of the will or trust deed;

- whether the trusts have common beneficiaries, in particular the number of common beneficiaries and the nature of their respective interests in each of the trusts;

- whether the assets of each of the trusts are administered and accounted for separately; and

- the powers of the trustees.

(b) If the scenario presented in document 2011-0430261E5 is amended such that there is created a single spousal trust, the residue of which is to be divided into three separate trusts pursuant to the terms of the testator's will, one for each of the three children of the deceased (with each child as sole beneficiary), and referred to as the "Residual Trusts" herein, we comment as follows:

- As at the date of death of the beneficiary spouse of the spousal trust, there would be a deemed disposition of the assets held in the spousal trust pursuant to paragraph 104(4)(a) and the aggregate gain, if any, would be taxable in the spousal trust.

- If the condition in paragraph 248(9.1)(a) is met, the Residual Trusts may qualify as testamentary trusts.

- Subject to the criteria detailed in the foregoing paragraph (a), the Residual Trusts would not generally be subject to the exercise of discretion afforded the Minister in subsection 104(2) of the *Act*.

(c) If the scenario presented in document 2011-0430261E5 is not amended and the three spousal trusts were treated as a single trust pursuant to subsection 104(2) of the *Act*, we comment as follows:

- As at the date of death of the common beneficiary spouse of the three spousal trusts there would be a deemed disposition of the assets held in each of the spousal trusts pursuant to paragraph 104(4)(a) of the *Act* and the aggregate gain,

if any, of each of the three spousal trusts treated as that of a single trust for tax purposes pursuant to subsection 104(2) of the *Act*.

- Subject to the criteria detailed in the foregoing, the Residual Trusts would not generally be subject to the discretion in subsection 104(2) of the *Act* in the taxation year following the taxation year in which the date of death of the beneficiary spouse occurred.

15. Terminal Returns and Estates

CRA requires a copy of the will and probate be filed with terminal returns and with estate returns, although we speculate that compliance with this requirement is not consistent. However, it is the reported experience of many practitioners that CRA typically requests we provide copies of these documents repeatedly. This carries a time cost to us as practitioners, which we must either bear ourselves or pass along to our clients. Given the above, we have the following questions:

a) Is it the current practice of the CRA to require different departments to contact the practitioner or taxpayer for documents rather than to search its databases to see if such material has already been submitted?

b) What, if any, steps will CRA take to address this issue and avoid the numerous requests?

CRA Response:

A copy of the will is generally provided in the deceased's final T1 return. It is removed from the return and filed in the taxpayer's permanent document (PD) envelope. When the taxpayer's legal representative or trustee previously submitted a copy of a will with the T1 return of the deceased, they are not required to file a copy with the first year filing of a T3 return. The trustee would advise CRA by ticking a box on the T3 return that indicates a copy of the will or trust document was previously submitted with the deceased's final T1 return. When this occurs, the CRA would retrieve the PD to view the copy of the will or trust document, if necessary.

16. Form CPT 30

Form CPT 30 *Election to Stop Contributing to the Canada Pension Plan, or Revocation of a Prior Election*, notes that the election is effective on the first day of the month following the date the employee gives a copy of the signed Form CPT 30 to the employer. Form CPT30 also notes that the original of the signed Form CPT30 should be sent to the CRA Taxation Centre but does not specify a date that it must be sent by.

If the Form is properly signed and dated in Dec, 2011, and given to the employer at the same time, when does the CRA need to receive CPT30 so that CPP does not apply for all of 2012?

CRA Response:

There is no deadline for sending completed CPT30 election forms to the CRA; however, the forms should be filed as soon as possible to prevent any misunderstandings about an employee's intent not to contribute to CPP in 2012. The effective date for both "elections" and "revocations" is first of the month following the month in which the employer receives the form (regardless of when the employee may have dated it).

CRA will not accept a revised CPT30 election where the original date is crossed out and replaced by December 31, 2011.

Employers who had not received a completed CPT30 from the employee and did not deduct CPP contributions during 2012 may have received a Pensionable and Insurable Earnings Review (PIER) listing showing there is a CPP deficiency for the employee(s) in question. Employers should contact the CRA at the telephone number recorded on the PIER listing to discuss this or provide a written explanation when replying to the PIER as soon as possible.

17. T1 Adjustment Requests

Will CRA accept T1 adjustment requests or Taxpayer Relief requests when a taxpayer incorrectly restricted the farm losses in the past, given the Supreme Court of Canada decision in *Canada v. Craig* 2012 SCC 43? We appreciate that the 2013 Federal Budget proposals, if passed, will override the result in Craig but we would appreciate your comments on our question.

CRA Response:

The long-standing position of the CRA, as articulated in IC 75-7R3 *Reassessment of a Return of Income* and paragraph 87 of IC 07-01 *Taxpayer Relief Provisions*, is that unless the taxpayer has protected their rights by filing a Notice of Objection, we will not reassess where the request is based solely upon a successful appeal to the Courts by a taxpayer.

18. Support for Medical Expenses

The CRA maintains a support section on its website as part of the electronically submitted income tax return Pre-assessment Review program and the Processing Review program. A taxpayer representative will receive a letter containing a code that is required to be entered in the applicable box on the CRA website and, on entering the code, the user is directed to a document that provides details regarding a list of items required to be provided in support of a client's claim. One such code is 15435e, which deals with support required for medical expense claims. In addition to asking for receipts for medical expenses claims, the above document advises the taxpayer representative to provide, if applicable, as follows: "a detailed statement from the insurance company confirming the total medical and/or dental expenses, and if applicable, the amount which has been or can be reimbursed."

a) Does this mean that if a taxpayer has any kind of medical insurance plan that it is necessary to first submit all medical expenses to the plan (even those which the taxpayer knows are either not included in the plan coverage, or where the annual limit has already been reached) so that the insurance company can include them on a statement to confirm the quantum of those expenses?

b) Does this mean that if a particular medical expense is capable of being reimbursed (in any portion) by an insurance plan, that the CRA will disallow the portion that could have been reimbursed, and allow the taxpayer to claim only expenses for which no reimbursement is available (as opposed to disallowing only expenses which have been reimbursed or paid directly by the insurer)?

CRA Response:

Subsection 118.2(2) of the *Income Tax Act* (the "*Act*") describes in detail the types of medical expenses that may qualify for the medical expense tax credit. Paragraph 118.2(3)(b) provides that an individual shall not include as an eligible medical expense any expense to the extent that the individual or certain other persons are entitled to be reimbursed for the expense. There is an

exception to this rule to the extent that the amount of the reimbursement is required to be included in computing income and is not deductible in computing taxable income. The rule in paragraph 118.2(3)(b) applies where any of the following persons are entitled to a reimbursement in respect of the medical expense:

- the individual;
- the patient;
- any person related to the individual or the patient; or
- the legal representative of the individual, the patient or any person related to the individual or patient.

By using "entitled to be reimbursed for the expense," the Act precludes the inclusion of amounts that could be reimbursed through an insurance plan and not only the ones that have been reimbursed. That is to say, only the portion paid by the taxpayer less the reimbursement amount or the entitlement to a reimbursement amount may be claimed as medical expense tax credit. Therefore, for the purposes of substantiating a claim for this credit, one is to assume that the expenses would need to be submitted to the insurance company before the amount can be considered by the CRA. In addition, the taxpayer should always keep copies of his receipts and other supporting documentation.

Q. 18 Follow – up question
Where there is a narrow plan, why would you have to submit non-eligible expenses to the plan prior to claiming on the T1?

CRA Response:

As stated above, "the *Act* precludes the inclusion of amounts that could be reimbursed through an insurance plan and not only the ones that have been reimbursed" (underlining added for emphasis). Therefore, when a return is selected for review by the CRA, it is not sufficient to know that the amount has not been reimbursed; the CRA must ensure that the amount cannot be reimbursed. For this reason, one is to assume that the expenses would need to be submitted to the insurance company before the amount can be considered by the Canada Revenue Agency. In addition, the taxpayer should always keep copies of his receipts and other supporting documentation.

19. Employer Payroll Remittances
When a Notice of Assessment is issued for a late remittance penalty, the form states that "*You must pay the amount owing immediately. Failure to do so may result in legal action being taken without further notice.*" We appreciate that such funds are considered trust monies and the desire for speedy resolution. Notwithstanding, why does the CRA not provide any ability for taxpayers to contact the Employer Services section to deal with situations where the CRA assessment is in error? If so, a CRA staff member could look at the account and readily see the error and reverse the assessment? While the general business inquiries number is provided, this is not of much help if there is a problem. Is there a more appropriate contact phone number that could be provided to assist with a speedy resolution?

CRA Response:

Source deduction payments (or payroll remittances) are allocated to the respective CRA program accounts using the information provided by the employer (or representative) on the remittance form that accompanied the payment. If the payment is received after the applicable due date for that remittance, the computer system will automatically assess a late remitting penalty and send a notice of assessment to the employer. As long as the account is under computer follow-up (no human intervention is required), CRA staff will have no reason to look at it. The employer or representative would have to call or write to the CRA in order to have the account reviewed by a CRA official.

Late remitting penalties may be assessed in error if the employer provided incorrect information on the remittance form. If a payment is misallocated and has resulted in the employer receiving a late remitting penalty the employer or representative should contact business enquiries to provide the correct remittance information or send a letter of explanation with a copy of the Notice of assessment to their local TSO. In both situations, the information will be referred to a CRA official to review and make the necessary corrections to the account.

Here are a few common remittance form errors that would result in the late remitting penalty being cancelled once the payment is properly allocated to the account:

- The employer indicates the pay period for which employee services were rendered rather than the pay period in which the employee is paid for his or her services. For example, an employee works in January but is not paid by the employer for these hours until early February. If the employer is a regular remitter, the payroll deductions withheld on these wages would have to be remitted to the CRA payroll program account on or before March 15. If the employer incorrectly indicated the remittance was for January's payroll deductions and remits on the deductions on March 15, the CRA would assess a late remitting penalty because the January remittance was due on February 15.

- The employer indicates the wrong year on the payroll deductions remittance form. For example, employer remits its January 2013 payroll deductions on February 15, 2013 but incorrectly indicates the remittance is for January **2012**. CRA would assess a late remitting penalty as the remittance appears to be a year late.

- The employer uses the wrong remittance form and also provides incorrect information on the form. For example, an employer makes a payment for the assessed arrears, penalty, or interest on April 25, 2013, but uses a PD7A remittance form instead of a PD7D remittance form. On the PD7A, the employer says the remittance is for December 2012 payroll deductions because the employer wants to pay the December 2012 deductions that were assessed by the CRA back in March 2013 when it was discovered the employer had not sent in their December 2012 remittance. Because the wrong remittance form was used, and the employer indicated the payment was for December 2012, the CRA will apply the payment to December. Since the remittance was received after the January 2013 due date, the system will assess a late remitting penalty. This can all be corrected when the employer provides an explanation to the CRA but until the account is reviewed by a CRA official, the computer system will continue to send out notices to the employer that an arrears balance exists on the account that needs to be paid.

Employers who have registered for My Business Account can use that service to transfer misallocated payments between various accounts and years but cannot request online cancellation of late remitting penalties assessed in error. Suggestions for improvement may be submitted to My Business Account and perhaps employers will be able to request cancellation of late remitting penalties assessed in error in the future.

An employer whose account has been assigned to a CRA Collections Contact Officer for payment of assessed arrears, penalties, and interest can contact that person about a late remitting penalty assessed in error.

An employer whose account has not been assigned to a CRA Collections Contact Officer for payment of assessed arrears, penalties, and interest must contact business enquiries at 1-800-959-5525 about a late remitting penalty assessed in error. The CRA business enquiries telephone agent will help the employer resolve the request to cancel the late remitting penalty assessed in error. Business enquiries telephone agents have a service standard of responding to phone calls in the queue within 2 minutes 80% of the time.

20. Electronic Services – Trusts and Partnerships

a) At the 2010 Round Table, CRA indicated a review of electronic services for Trusts was in progress, but had not established what, if any, services might be extended. Can the CRA advise of any planned timeframe for adding trust and partnership returns to the Efile, Represent a Client or other electronic programs?

CRA Response:

Electronic filing for T5013 Partnership Information Return is planned for January 2014.

The partnership return filers can now:

- authorize the CRA to send an email letting them know that they can view a notice of assessment, instead of getting it in the mail (“Manage online mail” service);
- view mail (correspondence);
- view endorsements;
- view transaction details;
- submit an enquiry and view status of an enquiry;
- manage address.

To access these online services, go to: **www.cra.gc.ca/mybusinessacount**, if you are a business owner; or **www.cra.gc.ca/representatives**, if you are a representative (including employees).

b) With T3 information returns in the EFILE program, confusion regarding the Web Access Code sometimes arises. The code relates to only the information return component of the T3 filings. The T3 Guide does not highlight this, nor does the letter in which taxpayers receive the Web Access Code, nor the T3 filing information on the CRA website. Would the CRA consider taxpayer relief if a taxpayer mistakenly used the web access code to file the T3 information return believing that this files the T3 return in its entirety?

CRA Response:

To file your trust-related information slips and summaries using Internet File Transfer or Web Forms, you need a Web access code (WAC). If you do not have a WAC, you can get one at www.cra.gc.ca/iref, or call 1-877-322-7849.

The XML specifications that filers need to use to build their electronic submission relates to T3 slips - http://www.cra-arc.gc.ca/esrvc-srvce/rf/mgmd/xmlspcs2013/t3-eng.html.

Our Web Forms application can be used for filing T3 slips electronically and should be used for filling out information slips, not the income tax return.

The information in the T3 guide describes where to send a T3 income tax return and provides two different addresses—Ottawa Tax Centre or International Tax Services Office, dependent on whether the trust is resident or non-resident respectively.

It is important to recognize that T3 Trust Income Tax and Information Return (T3 Return) cannot be filed electronically at this time. Only the T3 Statement of Trust Income Allocations and Designations (slips) can be filed electronically. If an individual wants to apply for Taxpayer Relief, they should review the following website for more information:

http://www.cra-arc.gc.ca/gncy/cmplntsdspts/cnclwvpnlty/menu-eng.html

21. CRA Public Presentation Materials

The CRA has been quite good recently at providing resources in the community for outreach programs and this is appreciated. With these sessions, the CRA has generally used PowerPoint slides to assist with the communication of the messages. Some of our members have been told that CRA could not or would not share these with the audience. If correct, this does not appear to be a reasonable strategy as an individual could very well take photos of the slides and then share without the CRA's knowledge (we are aware that this now occurs regularly in presentation to save having to 'write notes'). It is our view that information shared in a public forum such as these presentations should be immediately available to all others. If our understanding of the situation is correct, could the CRA implement policies to ensure this information is available for all in a fair, equitable manner without delay?

CRA Response:

The Canada Revenue Agency currently does not operate on a centralized framework for outreach programs. Normally, different areas and programs are responsible for their own outreach tools and activities, including providing the PowerPoint presentations.

The Canada Revenue Agency does offer a number of videos and recorded webinars regarding Canada Revenue Agency's programs and initiatives. The videos reflect what had previously been provided in PowerPoint presentations. This information can be accessed through the events and seminars link on CRA's website.

22. ULCs and LLCs

In CRA Document 2011-0411491E5, CRA commented on an interest in a United States Limited Liability Corporation (LLC) held by an Alberta Unlimited Liability Corporation (AULC) owned by a Canadian

resident individual. As a LLC and AULC are transparent for US tax purposes, the individual would be subject to US taxation on any portion of the LLC income attributed to the AULC. CRA indicated that payment of these taxes on the individual's behalf would constitute a taxable benefit, either under S 15(1) if paid by AULC or under S 246(1) if paid by LLC.

In our view, it is well established law that, for a benefit to arise, the benefit recipient must be economically enriched. It is unclear where that enrichment—the benefit—arises. The individual is subjected to US taxation on income of a LLC, but gains no economic benefits from that income until and unless it is paid from LLC to AULC, and then from AULC to the Individual. That payment from AULC to individual would itself carry tax consequences. The US tax payment by the individual does not create or enhance tax attributes (such as ACB or PUC) which would permit future access to AULC assets on a tax-free basis.

Rather than being economically enriched by the reimbursement of tax, it seems that the individual has incurred a cost to benefit AULC, as it is AULC which will benefit from the income which has been taxed to the individual. Reimbursement of this tax seems similar to reimbursing an employee, or a shareholder, for expenses incurred on behalf of, and for the benefit of, the corporation. He is simply made whole by being reimbursed for a cost which carried no personal benefit, and would not have been incurred except to benefit AULC.

If the AULC instead arranged to be subject to US taxation itself, it would almost certainly pay higher US taxes, leaving less equity to be paid out as dividends to its Canadian shareholder. It seems odd, from a policy perspective, to penalize the group for legally minimizing its exposure to US taxation, especially when that minimization preserves greater income to be ultimately repatriated, and taxed to the individual, in Canada. As such, we are assuming CRA's interpretation is not based on finding the structure offensive.

For purposes of this question, the US tax implications are understood (or assumed) to be as follows:

- The LLC earns income, but is not itself a taxable entity. Its income is instead taxable to its members for US tax purposes. For illustrative purposes, assume that LLC earns $100,000, of which the AULC's share is 20%, or $20,000.
- The AULC, like the LLC, is a fiscally transparent entity for United States tax purposes, not taxable in its own right. The AULC's income is considered earned by the AULC's shareholders for US tax purposes.
- The individual shareholder of AULC reports the income, $20,000 in our illustration. In our illustration, the individual is assumed not to be a US citizen or resident, and to have no other income subject to US taxation. He therefore reports the $20,000 of income on a US tax return (Form 1040 NR) and pays taxes on the income. This is a personal liability of the individual shareholder due to the Internal Revenue Service in the United States.

Can CRA explain the economic enrichment of the individual which it perceives to arise through the ownership structure, including payment of the US tax obligation of the individual and reimbursement for same by the actual owner of the income? Alternatively, if CRA believes that no economic enrichment of the individual is required for a benefit to arise, would CRA please explain its reasoning leading to this conclusion.

CRA Response:

The question of whether a corporation has conferred a benefit for the purposes of subsections 15(1) or 246(1) is generally one of fact. In this regard, the CRA has long held the view that a benefit has been conferred where a transaction or a series of transactions gives rise to an impoverishment of a corporation and an enrichment of its shareholder.

On this basis, an amount paid by a corporation to its individual shareholder as a reimbursement of that shareholder's personal tax liability would result in an impoverishment of the corporation and an enrichment of the shareholder for purposes of subsection 15(1). A similar enrichment would result for purposes of subsection 246(1) where the shares are held by that individual indirectly through another corporation.

23. Leap Year

In CRA document 2012-0438481E5, CRA opines that a corporation with a year-end of February 28 would not be entitled to file on the basis of a February 29 year-end in leap years. In our experience, most companies with a year-end in February believe their year-end is "the last day of February", not February 28, and file accordingly.

a) Is it CRA's practice to require re-filings where a historical February 28 year-end is filed with a February 29 year end in leap year? We have never seen such returns rejected.

CRA Response:

We use the history of the taxpayer's filing pattern to determine the taxpayer's intent with respect to their year-end:

- If the taxpayer has always filed with a February 28 year-end, even in leap years, and then decides (in a leap year) to file with a February 29 year-end, the IT Rulings Document referenced above would apply as their filing history would indicate that they had originally picked "February 28" as their year-end, and are now trying to change it.

- If historically the taxpayer has always filed with a February 28 year-end in non-leap years, and with a February 29 year end on leap years, we acknowledge that the taxpayer intends to have picked the "last day of February", and not the specific date "February 28" as their year-end.

b) Businesses which have quarterly or annual GST filings receive pre-printed returns reflecting a February 29, not a February 28, year-end. Is there a technical basis for adopting a different interpretation for GST than for income tax?

CRA Response:

A GST filer is automatically assigned a period end of the end of the month for their fiscal period. If the registrant wants to select a day other than the end of the month as their period end, they must file form RC71 and specify the start and end dates for their periods

c) Where a company's first year-end is February 29, in a leap year (say 2012), when would CRA consider its immediately subsequent fiscal year to end? Clearly, it cannot run for four years (to February 29, 2016) but either February 28 or March 1 is technically a change from February 29.

CRA Response:

Usually corporations file with a February 28 year-end in non-leap years, and we understand them to have selected their year-end to be “the last day of February”.

One day every four years seems unlikely to create a significant tax policy issue. Would CRA consider applying a reasonable administrative practice that, say, corporations may adopt a year end of either “February 28” or “the final day of February”, provided they file those leap year returns consistently?

CRA Response:

This is currently the case.

24. Subsection 89(11) Elections and SR&ED ITCs - SRED Credit – CCPCs

A corporation can make an election under subsection 89(11) to be considered a non-Canadian controlled private corporation (CCPC) at any time in or after the particular taxation year when the election is made. Our interpretation of the law is that a subsection 89(11) election does not impact an otherwise CCPC to still receive the enhanced federal SR&ED rate of 35%. We appreciate that the CRA has previously commented on this matter in *Technical Interpretation No. 2007-026234117*. Is the position outlined in that TI the current position of the CRA on this matter?

CRA Response:

Subsection 127(10.1) provides an additional investment tax credit of 20% for Canadian-controlled private corporations ("CCPC"), which is calculated based on the lesser of the amounts determined in paragraphs 127(10.1)(a) to (c).

Subsection 127(10.1) was amended as a consequence of the amendment to paragraph (a.1) of the definition “investment tax credit” in subsection 127(9), which reduced the basic 20% ITC to 15%. The reference to 15% in subsection 127(10.1) was replaced by a reference to 20% in order to maintain the overall 35% ITC rate.

Paragraph 127(10.1)(c) refers to the expenditure limit of the corporation for the year. The expenditure limit of a corporation for a taxation year is determined using a formula set out in subsection 127(10.2).

For taxation years ending on or before February 25, 2008, the B element of the formula referred to the total business limit for the year, determined under section 125. For taxation years ending after February 25, 2008, the formula no longer refers to the business limit, but instead to taxable capital. The position outlined in *Technical Interpretation No. 2007-026234117* is the current position of CRA on this matter.

In conclusion, a subsection 89(11) election does not prevent an otherwise qualifying CCPC from receiving the enhanced federal SR&ED rate of 35%. The election is limited to the provisions identified in paragraph (d) of the definition of CCPC.

25. Cash Charitable Donations Under Leveraged Tax Shelter Contributions

In a December 14, 2012 Tax Court of Canada case (*Allen Berg vs. HMQ* 2012 TCC 406) the Court allowed a charitable donation tax credit to the extent of the cash outlays made by the taxpayer. Will CRA follow the Court’s example in future reassessments of leveraged tax shelter contributions?

CRA Response:

The case referred to above is currently under appeal; there is other relevant jurisprudence in the area and it would be premature for the Agency to modify its assessing position at this point in time.

GST Questions

1. Processes - Business Window – Tax Centres

We continue to encounter challenges in determining the correct CRA location to send elections, information requests, and request for various types of action on GST/HST accounts. We currently have two requests in for penalty and/or interest waiver with an anticipated CRA turnaround of 9 to 10 months. One was for an undue delay on the CRA in processing a GST71 (Accounting Period election) and one was for multiple attempts to file a return for a backdated registration where payment was submitted with the initial attempt to file the return.

Common with the two examples above and other examples is that if there is anything unusual needed, such as backdating a registration date (in order to comply and remit tax); non-routine elections such as the GST71; etc., the submission "sits" at the CRA with no follow-up action. If an election was sent to a Tax Centre (Winnipeg or Surrey) and it should have been sent to a Tax Service Office (and vice versa) it has been our experience that the election is not forwarded to the correct location and we are not notified that we should re-submit to the correct location.

CRA Response:

It is every office's and every area within each office's responsibility to forward forms to the appropriate area for processing as soon as possible so as to not delay processing of that information or request for information. Generally, we would not ask a business or taxpayer to resubmit information but would expect the information to be directed quickly to the appropriate area for processing.

It should be noted that some elections, like the GST71, can be filed electronically using the "File an election" online service at www.cra.gc.ca/mybusinessaccount or at www.cra.gc.ca/representatives. The GST71 form clearly states that it should be sent to the applicable TC and provides both the CRA website and the 1-800 959-5525 Business Enquiries telephone number if someone needs assistance finding the correct address.

A request for waiver of penalty and interest can involve a number of areas. To provide a general response to what seems like a specific instance is likely not the best course of action. It is suggested that if there are particular instances where a business is waiting for action on their account for this period of time, provide CRA with the specifics/details of the account for specific follow-up.

a) Would it be possible to have a table or flowchart listing which information requests should be sent to the TSO and which should be sent to the Tax Centre?

CRA Response:

We do not have an external table or flowchart that can be provided, but the information as to where to send the election is clearly indicated in the back of the form. Our forms provide information on where to send the form. The information can be found in the "General Information" section of the form. It is usually titled "Where do you send this form?" Either it has the address on the form or advises the taxpayer to send it to their TSO or TC, and where on our website to locate the correct mailing address. The forms also instruct the registrant to call Business Enquiries if they require assistance with the correct mailing address. If documents are received at the wrong TSO or TC the correspondence is forwarded to the correct area for processing.

b) Is there a protocol for the CRA to contact taxpayers if there is any problem with a submission that has been made?

CRA Response:

The Taxpayer services correspondence units will contact a taxpayer when unable to process a request due to missing or incomplete information. Contact is made by telephone whenever possible. If contact by telephone is not an option, a letter will be sent to the taxpayer requesting the missing information. At times it may prove necessary to return the taxpayer's original request to have the taxpayer complete the missing information and resubmit the request.

A taxpayer's account needs to be registered properly prior to submitting a return; otherwise, the return may be cancelled. Similarly, elections need to be filed on time and processed prior to filing a return. If they are not and a return is submitted it may be cancelled; if that account is active, a notification will be sent to the registrant if their return has been cancelled. It should be noted that taxpayer contact is often attempted prior to cancelling a return by the processing department.

c) Can we as professional advisors be given a list of applicable telephone numbers of those in the CRA that can help us find answers for our client's situations? We are after all, trying to assist the CRA in getting compliance of a large number of registrants.

CRA Response:

The CRA has made significant enhancements to our call centre operations in recent years to better serve all Canadians, including third-party representatives. Financial investments were made to improve accessibility by adding additional agents. In an environment that deals with over 18 million calls per year, front line agents play an important role in the organization by ensuring proper call routing to the appropriate business lines, while also dealing with the less complex enquiries. This also ensures that the other tiers of resources are utilized efficiently. This call routing mechanism is done in a controlled environment and cannot be left to the discretion of the caller without impacting current resources. Within the current resource allocation, the CRA cannot provide an external access and dedicate additional resources without shifting resources from existing lines, which would have a negative impact on service to the general population.

Q 1. Follow up questions:

a) There appears to be an issue with backdate of registration with non-residents.

CRA Response:

One of the three tax service offices (Vancouver, Windsor, Halifax) are assigned to register non-resident GST/HST accounts based on the geographical location of the non-resident. Agents should be familiar with the backdating guidelines. If the caller is not satisfied with the response, they can ask to speak to a supervisor or senior agent.

b) It is hard to find someone that understands the nature of our needs, and it takes a long time to connect. We always have to call Enquiries, but the questions are often more sophisticated than Enquiries can answer. We need someone in Enquiries that has the expertise to appropriately direct the calls.

CRA Response:

Questions regarding non-resident GST/HST are answered by specialized agents. To determine which number to call please see the information at the following link,

http://www.cra-arc.gc.ca/cntct/gsthstnnrs/menu-eng.html.

c) It is difficult to track documents that have been submitted until after they are processed.

CRA Response:
Some documents may be easier to track than others, depending on the tracking mechanisms that have been put in place. A document might have to go through multiple areas within CRA before it gets processed.

2. Problem with Restricted Access to CRA General Telephone numbers

The CRA is now assigning both collectors and auditors on a National basis. This results in technical advisors having to work around the time zone of the particular CRA Officer. However, in trying to gather information to respond to these other time zones, we are being blocked in calling the general 1-800 phone lines to 8:15 am to 4:30 PM local time. If the CRA is going to force us to work with officers in Halifax or Victoria, we have to have full access to CRA resources who are available in those time zones regardless of where we are calling from. Will the CRA reconsider its decision to screen calls to general numbers by area code of the caller?

CRA Response:
Certain CRA officers are assigned across Canada for certain files on a national basis. If the assigned tax preparer has been given authorization on the account they can access the account via My Business Account http://www.cra-arc.gc.ca/esrvc-srvce/tx/rprsnttvs/bsnsss-eng.html. The list of some of the activities in My Business Account that an authorized representative could take part in would include filing returns for the business, view account balances, view account transactions, file a Notice of Objection, etc. There are two levels of authorization that a taxpayer may authorize. Level 1 authorization will give some options to view the account, while a Level 2 authorization will allow the representative to make certain changes on the account. The internet will allow the tax preparer to access the account regardless of the time zone of the CRA officer involved in the account.

For T1 personal tax accounts there are three levels of authorization available to the tax preparers: Level 1, Level 2 and Legal Representative. Level 1 offers the tax preparer some view only options, while the Legal Representative allows for viewing and changing filed returns along with making payment arrangements.

For those issues that require telephone contact, most of the correspondence will have a telephone number which is the 1-800 telephone line. If there is an assigned CRA officer they will include their telephone and mailing address contact information on the correspondence. Also, once an account has been assigned, all CRA officers have voice mail that a message can be left on 24 hours a day and messages will be responded to during regular working hours.

As technology advances, CRA is working to make efficient use of our resources. CRA is moving forward to allow more online access to representatives so that there is better access to the information needed. There is a link to “Represent a Client” attached at http://www.cra-arc.gc.ca/esrvc-srvce/tx/rprsnttvs/menu-eng.html. This link is helpful in seeing what is available from CRA to better service the taxpayers.

We highly recommend that tax preparers take some time to view CRA’s online services to allow for the quickest service to the taxpayer.

3. Online GST Registry Search Function

CRA's online web registry only looks at the first ten characters when searching, potentially resulting in false positives. The registry also confirms the information entered, even when the actual registration is in a different name. CRA Headquarters is aware of this. This situation removes the use of the GST Registry as a reliable method to confirm that a person is registered, to the extent that CRA auditors have suggested that using the registry does not constitute "due diligence." There are very large consequences where the person verifying the registration is selling real property or a business. Can we expect this to be corrected and, if so, when and how?

CRA Response:

The GST/HST Registry was launched in 2006 as a result of a 2005 federal budget announcement. Its use is governed and restricted by s.295 (6.1) of the *Excise Tax Act* such that it can only confirm or deny the registration of a person when provided with the BN, business name and transaction date. As part of this process we recommend confirming the information on the receipt with the business owner to ensure it matches the information provided to the CRA.

When developing the Registry, tests were done on name matching in order to optimize the service. Matching on 100% of the name produced over 80% false negative results. Further testing and analysis indicated that matching on 10 characters produced the optimal results. Since 2006 we have only been made aware of a few false positive results; however, we recognize that it is a problem and we are examining several options. These include changing the number of characters that are searched on, amending the legislation and/or providing a new application that will publish the BN and Name of all businesses registered for a Business Number. This would result in a two-step process; the first to confirm the name and BN and the second to confirm the GST/HST registration. Currently we do not have a timeline for any changes.

4. Business Registration Online System

CRA's "Business Registration Online" system never seems to work. After entering all required and requested information, a page is often returned saying something to the effect of "You have exceeded the number of registrations." What is being done to allow professionals to register businesses for GST/HST outside of CRA's business and phone times?

CRA Response:

The Business Registration Online (BRO) application was originally designed as a single use registration method for the non-complex needs of small- and medium-sized businesses. Its current restrictions were implemented to heighten the application's security level.

Since its launch in 1997, BRO has expanded into an electronic service that now links to certain provincial web sites and has attracted the interest of large business owners/decision makers and third-party representatives who want to use it for more complex and specific needs.

We are aware that there are restrictions in BRO that prevent certain type of requests from being registered and will result in an error message being displayed such as ‘'you have exceeded the number of registrations.'' We are conscious of the frustration it is causing the professional community and this is why we are currently working on re-engineering BRO, with an implementation date of October 2014.

The next version of the application will be more robust, secure, and client-centric oriented. It will meet the needs of the business community and their representatives and will:

- Remove the restrictions imposed on users completing multiple registrations in a single session.
- Allow registration of more than two programs accounts for the same program ID under a client (BN9).
- Make the process more user friendly for all applicants.
- Improve the flows between screens, among many other changes to simplify the task of registering online.

The newly developed online business registration service will re-affirm the CRA's commitment to promoting voluntary compliance and optimizing electronic services.

5. Effective Date of Mandatory Registration

How far back will CRA allow a registration of a person that is not a small supplier, where that person has neglected to register when it should have, but which has made zero-rated supplies? Specifically, if a person has provided services to the province of Alberta (which, of course, does not pay GST/HST) and has exceeded the small supplier threshold at a particular time two or three years in the past, will CRA agree that the person must be registered for GST/HST back to that time, even if it is two or three years past?

CRA Response:

A person that is required to be registered for GST/HST because it meets one of the following conditions must be backdated to the date the registration become mandatory:

- the person carries on a taxi business;
- the person's worldwide revenues from taxable property goods and services are **more than** the small supplier threshold amount of $30,000 (or $50,000 for public service bodies), including those of any associates, in the last four consecutive calendar quarters or in one single calendar quarter;
- the person is a non-resident who enters Canada to makes supplies of admissions to a place of amusement, a seminar, an activity or an event in Canada;
- the person is a non-resident who solicits orders in Canada for prescribed goods (over $30,000) to be sent to recipients in Canada by mail or courier; or
- the person is a prescribed SLFI.

We must also note that revenues from zero-rated supplies are part of the revenues included in taxable goods for the calculation of the threshold amounts mentioned above but revenues from supplies of financial services, sales of capital property and goodwill attributable to the sale of a business are excluded.

For their specific example about the person that has provided services to the Province of Alberta and has exceeded the small supplier threshold at a particular time, the mandatory registration for GST/HST will be backdated as far as when the registration become mandatory by meeting one of the conditions shown above. The tax status of a taxable supply of a property or service does not

change to a zero-rated supply when made to a qualifying entity of the Government of Alberta; rather, the entity is relived of paying the GST/HST on the supply. For further information, you may wish to refer to GST/HST Memoranda Series Chapter 2.1, *Required Registration,* Chapter 2.2, *Small Suppliers,* and Chapter 2.3, *Voluntary Registration*.

6. Audit Issues

Could the CRA please provide an update or listing of the current areas of concern or focus for GST/HST audits?

Could the CRA please describe the types of expenses, upon which a holding corporation ("Holdco") would be able to claim input tax credits pursuant to section 186 of the *Excise Tax Act*? For purposes of responding, please assume that Holdco's only asset are the shares in a wholly-owned subsidiary ("Subco") that is engaged exclusively in commercial activities.

Holdco has the following expenses:

- audit services for both Holdco and Subco;
- costs for issuing shares of its own capital stock, the proceeds of which is then lent down to Subco; and
- travel costs for the CFO to travel to Subco's offices to provide advice and management services to Subco.

CRA Response:

In response to the first part of this question, the following is a list of CRA's top 10 areas of concern for GST/HST (not in any particular order of importance):

1. **Recaptured Input Tax Credits (RITCs): Proxy Use**
   CRA is still seeing issues with RITCs not being reported by large businesses and proxies not being filed properly and the wrong rates being used.

2. **Input Tax Credit allocations**
   CRA is still seeing issues with ITCs not being allocated between exempt and taxable activities.

3. **Definitions and amendments to financial services**
   There are concerns with determining who is a Selected Listed Financial Institution and the impact of that determination.

4. **Financial services provided by non-financial institutions (for example, "arranging for")**
   CRA has noted concerns with arranging for consumer financing versus assisting in the completion of the paperwork.

5. **Imported supplies (Reinsurance/loading)**
   There is a lack of documentation being provided by the insurers during audits to support the registrant's position.

6. **Public Section Bodies**
   CRA is seeing issues with determining if someone meets the definitions of a hospital authority, as well as determining if a person is a qualifying Non-Profit Organization based on the government funding received.

7. **New Housing Rebate entitlements on housing flips**
   CRA is looking at whether an individual is entitled to claim a new housing rebate when they sell their property around the same time they first acquired it.

8. **Section 186 application to related corporations**

9. **Joint Ventures and Bare Trusts**
   Can a bare trust be the operator and/or a member of a Joint Venture?

10. **Pensions**

New legislative changes were announced in the 2013 Budget.

CRA's policy with respect to the application of section 186 and Input Tax Credits for Holding Corporations can be found in GST/HST Memorandum 8.6, *Input Tax Credits for Holding Corporation and Corporate Takeovers*. If you have case specific facts that are not addressed in the memorandum, the CRA encourages you to submit a request for a ruling. Details on requesting a ruling can be found in GST/HST Memorandum 1.4, *Excise and GST/HST Rulings and Interpretations Service*.

7. Amending GST/HST Returns

CRA has an existing publication (P-149R) that currently addresses its administrative policy with respect to the amendment of GST/HST returns. The position laid out in that publication is that net tax cannot be decreased by claiming additional input tax credits ("ITCs") that were previously missed by a registrant. It has been suggested by some CRA officials that any return within the typical four year limitation period for claiming ITCs can be amended to claim additional ITCs, even if it decreases net tax.

This appears to be a departure from the current policy statement and we would like clarification if this is an official policy change of the CRA and whether P-149R will be amended to reflect this. A re-write of the policy statement may also be timely when it comes to registrants claiming missed ITCs which are subject to the recapture rules in certain participating provinces.

CRA Response:

CRA's policy with respect to the amendment of GST/HST returns has not changed and remains in line with the current version of Policy Statement P-149R, *Administrative policy regarding adjustment to the goods and services tax/harmonized sales tax return.*

8. "Arranging For" a Financial Service

With regards to "arranging for" services and automobile dealerships, we understand the CRA has recently audited and assessed certain dealers as having provided a taxable service but failed to charge GST and remit such. We reference the Canadian Auto Dealer Association recent communication to this effect. Has the CRA developed a policy (other than questions 13-15 on Bulletin B-105) on what constitutes "arranging for" when automobile dealerships forward customers to either banks or insurance companies and receive a commission for their services? If so, could the CRA explain the legislative rationale for the

changed position as we understand the legislation itself has not changed? Has the CRA created an audit policy with respect to these assessments? We note that some dealerships in Canada are being assessed whereby others are not.

CRA Response:

CRA continues to follow the policy in Technical Information Bulletin B-105 with respect to what constitutes "arranging for" when dealing with automobile dealerships. CRA has not developed a separate audit policy. Assessments and audit selection of automobile dealerships are based on CRAs risk assessment models.

9. What is Cosmetic Dentistry?

GST: What is the CRA's policy with regards to what is and is not cosmetic dentistry, since there does not seem to be a clear definition of cosmetic dentistry? How would CRA define cosmetic dentistry (specific procedures and services)? How is CRA managing compliance?

CRA Response:

Exempt supplies of health care services are identified in Part II of Schedule V to the *Excise Tax Act* (the *ETA*). In particular, section 5 of Part II of Schedule V provides that a supply of a consultative, diagnostic, treatment or other health care service rendered by a medical practitioner to an individual is an exempt supply. For purposes of this Part, a "medical practitioner" is defined to mean a person who is entitled under the laws of a province to practice the profession of medicine or dentistry (e.g., a dentist). Further, it is not necessary for purposes of section 5 of Part II of Schedule V that the supply is made directly by the medical practitioner; rather, this section provides that health care services rendered by medical practitioners are exempt regardless of the identity of the supplier. Also, section 8 of Part II of Schedule V provides an exemption for the supply of a dental hygienist service.

Section 1.1 of Part II of Schedule V excludes cosmetic service supplies as well as any separate supplies of property and services related to these supplies from the exempting provisions of that Part. A "cosmetic service supply" is defined in section 1 of Part II of Schedule V to mean a supply of a property or a service that is made for cosmetic purposes and not for medical or reconstructive purposes. Cosmetic service supplies are procedures generally aimed at enhancing one's appearance, rather than treating a medical condition or for reconstructive purposes.

Whether a particular dental service is exempt or taxable is based on the purpose test set out in section 1.1 of Part II of Schedule V and the definition of "cosmetic service supply." We understand that the dental profession includes a wide range of procedures under the umbrella term "cosmetic dentistry." Although these procedures are aimed at improving the appearance of the teeth, some of these procedures have an underlying medical or reconstructive purpose. Therefore, even where a dental procedure is included under the umbrella "cosmetic dentistry," if there is a medical or reconstructive purpose that procedure will not fall within the meaning of "cosmetic service supply" and the supply of that procedure will not be excluded from the exempting provisions of Part II of Schedule V.

Accordingly, whether a particular dental service is excluded from the exempting provisions is a question of fact and will depend on whether the service is a "cosmetic service supply." Thus, the exempt status of a particular dental service is not based on whether it is considered to be cosmetic dentistry by the dental profession, but rather whether a particular supply has a medical or reconstructive purpose. As such, the tax status of a dental service is determined on a patient-

by-patient basis. Accordingly, there is no requirement for the CRA to define cosmetic dentistry, nor publish a policy on cosmetic dentistry for ETA purposes.

A dental procedure that is performed solely to improve the appearance of a person's teeth, gums or bite (and have no underlying medical or reconstructive purpose) would be considered a cosmetic service supply. Examples of cosmetic service supplies could include teeth whitening, gum depigmentation, gum lifts, bonding procedures and porcelain veneers (laminates) if these supplies have no medical or reconstructive purpose.

We also understand that the dental industry considers the procedures listed below to be cosmetic dentistry. However, as these procedures have a medical or reconstructive purpose, these procedures would generally not be considered cosmetic service supplies for purposes of Part II of Schedule V. Therefore unless there is no medical or reconstructive purpose, most prosthodontic and orthodontic procedures would be covered by one or more of the exempting provisions of Part II of Schedule V:

- the addition of a dental material to teeth or gums such as gum grafts;
- the removal of tooth structure or gums (e.g., gingivectomy);
- straightening of teeth, whether accompanied by an improvement in appearance of the face (orthodontics);
- tooth reshaping used to correct a crooked tooth, or alter the length, shape or position of teeth;
- procedures to prevent tooth decay (e.g., enamel-ectomy);
- dental bridge procedures, crowns, artificial teeth and other dental prosthetics used to replace missing teeth;
- dental fillings and other tooth restorations.

10. Prescribed activity for section 273 election

Have CRA or Finance given any indication as to whether they will be expanding the list of prescribed activities that qualify for the purpose of the GST subsection 273(1) JV Election and, if so, what additional activities would be added?

CRA Response:

The Minister of Finance is responsible for the Joint Venture (GST/HST) Regulations. The prescribed activities for purposes of the joint venture election under subsection 273(1) are listed under subsection 3(1) of the regulations. Department of Finance officials have indicated in the past that, workload permitting, they intend to review the joint venture provisions. They did not, however, indicate whether any particular activities would be considered for addition to the regulations.

11. New House Transition Administrative Relief

Will CRA be providing administrative relief from the new housing transition tax (on behalf of BC) for sales by status Indian developers of new housing on reserve, based on CRA's administrative policy as outlined in P-039R?

In most cases, builders of residential property on Indian reserve transfer interests of leasehold property to purchasers. As such, the self-supply provisions in section 191 apply to deem the builder to have sold, collected and paid GST/HST prior to the actual conveyance of the leasehold interest to the purchaser. The purchaser receives their leasehold interest from the builder exempt from GST/HST. However, in

addition, the BC new residential housing transition tax could also apply to the builder's self-supply pursuant to subsection 20(1) of the *New Housing Transition Tax and Rebate Act*.

For purposes of the GST/HST, if the builder is a general partnership which includes a status Indian (or band-empowered Entity) and the sale is on an Indian reserve, CRA's administrative policy embodied in P-039R would apply such that the partnership builder would not collect and remit any GST/HST on the self-supply under section 191. However, under the former Social Services Tax, relief from SST would only apply to the extent of the status Indian's interest in the partnership as indicated in Bulletin SST-046. As indicated by the BC Ministry of Finance, we understand that the former policy under the SST may be re-implemented.

The issue is that each government has different policies in respect of the relief from the sales tax. Given that the CRA (which follows the federal policy) will be administering a BC provincial statute for the transition tax, can CRA please clarify which administrative policy will apply in respect of this particular builder's self-supply? Would the answer differ if an Indian individual (or band-empowered entity) was a partner in a limited partnership? In either case, how would CRA (or BC) interpret the ownership interest of the Indian in the partnership if there is a different income sharing percentage than ownership percentage?

CRA Response:

The CRA's position concerning self-supplies made under the *New Housing Transition Tax and Rebate Act* by a builder who is an Indian individual, an Indian band, or a partnership which includes as a partner a band-empowered entity.

Background

Now that British Columbia (BC) has returned to a provincial tax and the GST, it imposes a 2% temporary transition tax on certain supplies of newly constructed or substantially renovated housing and of interests in such housing. This temporary tax (the BC transition tax) is generally payable by the purchaser and collectible by the vendor. The builder (or in certain cases, the agent of the builder where an election is filed) must remit the BC transition tax to the CRA. The transitional period ends March 31, 2015. BC has not published its policy for the new provincial tax as it concerns First Nations.

It is the CRA's role to administer the BC transition tax for the Government of BC and a question has been asked for a response at a roundtable with the Institute of Chartered Accountants of Alberta (ICAA).

Executive summary of response

If a self-supply is made by an Indian band or an Indian individual under section 191 of the *Excise Tax Act* (ETA) and the deemed supply relates to an interest in reserve land, the BC transition tax does not apply. In cases in which there is a limited partnership which has an Indian individual, an Indian band, or an unincorporated band-empowered entity as a partner, the self-supply will be fully relieved of the BC transition tax if the deemed supply is that of an interest in reserve land. In cases in which the builder is a limited partnership which has as a partner an incorporated band-empowered entity, the response to Question 2 below should be consulted.

Issue presented by the ICAA

In most cases, builders of residential property on Indian reserves transfer interests of leasehold property to purchasers. As such, the self-supply provisions in section 191 of the ETA may apply

in certain situations to deem the builder to have sold, collected and paid GST/HST upon the conveyance of the leasehold interest to the purchaser.

For purposes of the GST/HST if the builder is a partnership which includes as a partner an Indian individual or an Indian band, and the supply of an interest in real property is made on an Indian reserve, the CRA's administrative policy embodied in Technical Information Bulletin B-039, *GST/HST Administrative Policy: Application of the GST/HST to Indians*, (B-039) would apply such that the partnership builder would not have to remit any GST/HST on the self-supply under section 191. However, under the former BC Social Services Tax (SST), the ICAA claims that relief from SST would only apply to the extent of the Indian individual's interest in the partnership as indicated in Bulletin SST-046 (previously in effect). We note here that taxpayers and advisors should refer to BC Ministry of Finance publications for the Government of BC's policies in respect of the new BC provincial sales tax.

Questions

1.Will the CRA be providing administrative relief from the new housing transition tax (on behalf of the Government of BC) for supplies made by builders of new housing on reserve who are Indian individuals based on CRA's administrative policy as outlined in B-039R?

CRA Response:

The CRA is administering BC's *New Housing Transition Tax and Rebate Act* ("the BC Act"), which relies on provisions of Part IX of the ETA.

If pursuant to section 191, with respect to a residential complex or addition to a multiple unit residential complex, the self-supply occurs on a reserve, the supply will be relieved of the GST/HST under B-039 and section 87 of the *Indian Act*, as it is made with respect to an interest in real property on a reserve. Therefore, although a self-supply occurs, no GST/HST will be required to be remitted by a builder that is an Indian band or an Indian individual.

The tax relief described in the paragraph above will also apply to on-reserve self-supplies for purposes of the BC transition tax such that the tax is not required to be remitted where the self-supply is relieved of the GST/HST as described in the preceding paragraph. This position is supported by section 87 of the *Indian Act* which states:

> **87.** (1) Notwithstanding any other Act of Parliament or any Act of the legislature of a province … the following property is exempt from taxation:
>
> - (*a*) the interest of an Indian or a band in reserve lands or surrendered lands; and
> - (*b*) the personal property of an Indian or a band situated on a reserve.
>
> Idem
>
> (2) No Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (1)(*a*) or (*b*) or is otherwise subject to taxation in respect of any such property.

We understand from the fact scenario of your submission that your issue concerns the self-supplies made under section 191 of the ETA that may be affected by the BC transition tax as it applies to First Nations and members of these First Nations which are governed by the *Indian Act*. Under the *Indian Act*, these First Nations are called Indian bands. Your issue does not

concern self-governing First Nations such as Nisga'a Nation, Tsawwassen First Nation, the Maa-Nulth First Nations, and their citizens. We therefore will not address supplies made by them.

We note that some of the Indian bands in BC have implemented the FNGST. In these cases, the FNGST, which replaces the GST on these bands' reserves, is payable by all recipients of taxable supplies, including Indian bands and Indian individuals on self-supplies of real property, as section 3 of the *First Nations Goods and Services Tax* specifies that the FNGST imposed under a First Nation law applies despite section 87 of the *Indian Act*. As the BC transition tax on self-supplies originates from an Act of the legislature of a province, the BC Act will **not** apply to require a builder who is an Indian individual or an Indian band to remit the BC transition tax. All other builders have to collect and remit the BC transition tax except as noted below.

2. Would the answer differ if an Indian individual (or band-empowered entity) was a partner in a limited partnership? In either case, how would the CRA (or the Government of BC) interpret the ownership interest of the Indian individual (or band-empowered entity) in the partnership if there is a different income sharing percentage than ownership percentage?

CRA Response:

For purposes of GST/HST, a bona fide limited partnership which includes as a partner an Indian individual, an Indian band, or a band-empowered entity, will be accorded the tax relief described in B-039 for partnerships, which means that a bona fide limited partnership may benefit from the full relief from the GST/HST for a self-supply made on a reserve. However, for purposes of B-039, the tax relief will not apply where the builder is a limited partnership which has as a partner an incorporated band-empowered entity and the limited partnership is engaged in commercial activities, such as making taxable self-supplies of real property. This is because activities for which ITCs are available are not band management activities.

The BC transition tax will also not apply to self-supplies in cases where B-039 relieves the GST/HST. In the case of an incorporated band-empowered entity that is a member of a limited partnership making a self-supply of real property (i.e. commercial activity), the BC transition tax will apply, because the self-supply is not tax relieved under B-039.

12. Voluntary Disclosure Program

We understand that CRA is again reorganizing the Voluntary Disclosure Program into a more regional/national workload format. We would like the CRA to elaborate on this process and provide us with senior contact persons (local, regional or national) with whom we may discuss files and issues on a no-names basis in order to get comfort on the likely treatment of one or more issues encountered in the file. Please also explain the current policy on GST/HST disclosures and whether interest assessed under subsection 280(1) will be treated as penalty, entitling a person who would be subject to an assessment under subsection 280(1) to do a voluntary disclosure so that no interest would apply?

CRA Response:

Response to first question: *We understand that CRA is again reorganizing the Voluntary Disclosure Program into a more regional/national workload format. We would like the CRA to elaborate on this process and provide us with senior contact persons (local, regional or national) with whom we may discuss files and issues on a no-names basis in order to get comfort on the likely treatment of one or more issues encountered in the file.*

The Canada Revenue Agency (CRA) routinely conducts reviews of its programs to ensure that they align with the CRA's objectives, operate at full efficiency, and deliver value for money for Canadian taxpayers. This internal reorganization was designed to help the Voluntary Disclosures Program (VDP) better respond to taxpayer expectations and complement other initial assessment programs. Since a number of taxpayer programs and services are delivered out of the CRA's tax centres, it was determined that the VDP would also be delivered from the tax centres. Currently the three tax centres administering the VDP include Surrey Tax Centre, Winnipeg Tax Centre and the Shawinigan Tax Centre. At present, a taxpayer may call the General Enquiries lines to obtain basic information about the program:

Businesses: 1-800-959-5525
Individuals: 1-800-959-8281

or consult the CRA's web page: www.cra-arc.gc.ca.

Taxpayers wishing to avail themselves of the VDP must provide sufficient information to begin the discussion under the VDP, whether the disclosure involves a named or no-name method. This is clearly outlined in respective paragraphs 22 to 30 (Disclosure Methods) and 43 to 45 (Making a Disclosure – Information/Documentation Required). As is stated in the IC, under paragraph 26 (No-Name Disclosure Method), "These discussions…are done before the identity of the taxpayer is revealed." This allows a taxpayer or a representative to withdraw their disclosure request should they not feel comfortable with pursuing a disclosure decision. Taxpayers who submit a disclosure will be contacted to discuss their file if necessary by the appropriate VDP officer. For no-name files, a submission must first be made to the CRA and the taxpayer will be contacted to discuss the file further. The 90 day expiration period to provide the identity of the taxpayer will only begin once the CRA has made contact with the taxpayer to discuss their no-name disclosure.

The CRA values its partnership with the tax representative community and recognizes the influence this community has on promoting taxpayer compliance with respect to using the VDP. To this end, the CRA can confirm that there has been no change to VDP policy as outlined in the *Information Circular IC00-1R3 (IC).*

CRA Response:

Response to second question: *Please also explain the current policy on GST/HST disclosures and whether interest assessed under subsection 280(1) will be treated as penalty entitling a person who would be subject to an assessment under subsection 280(1) to do a voluntary disclosure so that no interest would apply?*

Where a disclosure involving a wash transaction has been made and is accepted by the CRA as a valid disclosure in accordance with IC00-1R2, Voluntary Disclosures Program, the interest and penalty will first be reduced to interest of 4% of the transaction amount at the time of assessment. This 4% interest will not be applied to the transaction identified as a wash transaction and reported in the course of a disclosure pursuant to the Voluntary Disclosures Program. In such circumstances, up to the date of assessment, only the taxes that should have been collected originally by the supplier, or the ITCs not accounted for properly for that transaction, will be sought by the CRA. Any amount of the assessment that is unpaid on the date of assessment will then be subject to normal interest under section 280 from the date of assessment until the date

the outstanding amount is paid. Further information can be found in GST/HST Memorandum 16.3.1, Reduction of Penalty and Interest in Wash Transaction Situations.

Professional advisors would like a phone number to speak with someone. What proof of receipt is there?

CRA Response:

Response to follow-up question.

Proof of receipt is provided in the form of a decision letter (accepted or denied) or a letter requesting additional information. If you have not received a letter from CRA within 6 weeks of your submission, please contact our general enquiries lines with the account number of the submission. The applicable general line can be found in following link: http://www.cra-arc.gc.ca/cntct/phn-eng.html.

13. Required Application of rebates being ignored by auditors

With respect to the GST/HST computer system that was changed in 2007 to match the income tax processing, we are still seeing the same type of issues that have been identified at this and other forums. Auditors are ignoring the legal requirement to assess rebates as part of the audit, and even when they do assess them, they run them through Summerside TSO, creating thousands of dollars of interest due to the failure to have the credits applied in the reporting period under audit.

Subsection 296(2.1) requires that the Minister shall:

> *"apply all or part of the allowable rebate against the net tax or overdue amount as if the person had, on the particular day, paid or remitted the amount so applied on account of that net tax or overdue amount"*

"Particular day" means for an assessment the day on or before which the return was required to be filed, and for an overdue amount it means the day on which the overdue amount became payable by the person.

The purpose of this section is to require the Minister to credit the account to remove all interest except to the extent there is an outstanding balance remaining after the rebate is applied.

What is the CRA doing to correct these problems in terms of fixing the system or in educating the audit staff of all CRA offices, since prepayment returns for Alberta registrants are now being assigned to every office in the country, large and small?

CRA Response:

These types of problems should be addressed on a case-by-case basis. Auditors should be applying unclaimed rebates pursuant to subsection 296(2.1) of the ETA. If registrants and/or their representatives are continuing to encounter cases where this is not being done by auditors, then the registrants and/or their representatives should be contacting the local Tax Service Office that conducted the audit to determine why the offset was not performed.

14. Reversing Audit Assessments

The Edmonton and Calgary TSOs have long indicated that the Team Leader will consider revising an assessment if we can show the auditor made a technical error or overlooked documentary evidence that supports a change. We have been successful in using this process on occasion.

However, this process often takes time and to protect our clients we must file a Notice of Objection which causes the particular reporting period to be frozen. We are finding that in that case CRA Appeals will not allow CRA Audit to effect the change, instead putting through the change as part of processing the Objection.

Perhaps we need a formal process to allow CRA Audit to change its assessments and relieve Appeals of having to deal with the situation, or we can do what is normal in Eastern Canada—once CRA Audit issues an assessment, no matter how flawed, the registrant must go through the Objection process.

Can you suggest a process by which we all can minimize the time spent by everyone in properly assessing the "right" amount of Net Tax of a registrant?

CRA Response:
CRA is unable to provide a response at this time. The issue is under review by H.Q.

15. Eligible Management Services
We understand that CRA is actively reviewing corporate structures whereby one person provides management services to another related person. CRA is looking to corporate articles and/or partnership agreements to support the “management services” as a business activity. Can CRA provide any comments on what, specifically, it is looking for in these arrangements and why it feels that ITCs are not eligible if, for example, a corporation does not have something to the effect of “provision of management services” as a business activity?

CRA Response:
The CRA is looking for the nature and intent of transaction. The GST/HST requires a detailed review of the facts and circumstances of the transactions, which generally includes a review of the agreement or agreements, if applicable, under which the supply is made.

16. Poorly Trained Auditors and Team Leaders
There have been inconsistencies in how an audit of a registrant's GST/HST is handled. Some of the analysis and assessments have been issued contrary to standing CRA Policy Statements, Information Bulletins, or with seemingly no regard to jurisprudence. There have also been assessments levied on the basis of Internal CRA Rulings, which the CRA will not provide to the GST/HST Registrants under audit or the representatives, which hinder the ability of the registrant to rebut the proposed assessment.

With the apparent increase of GST/HST audits, we are seeing a lot of CRA auditors who seem to be lacking in basic technical knowledge. We are having to file more Objections in the last year than in the previous ten years combined and most assessments are reversed by Appeals in less than a week, without any additional information than what the auditor had. The assessments are simply incorrect. While we are dealing with many auditors outside Alberta, most that are so quickly reversed were Alberta auditors and many were not "new" staff.

What steps is CRA taking in order to ensure that GST/HST registrants are receiving fair treatment on a timely basis, and describe what is being done to ensure that CRA staff are discouraged from putting forward questionable assessments and forcing GST/HST registrants to wait for long periods of time in the objection process at significant costs? We ask that you ensure that every GST/HST auditor and Team Leader be informed that they are to consult the audit manual and the *Excise Tax Act* itself, so that we don't see comments or proposals that ignore basic rules. Can you comment on whatever actions are being taken to address the falling expertise at the CRA?

CRA Response:

No response will be provided to this question.

17. Notional Assessments

We have a large number of registrants who do not collect GST or HST, but who are still legitimately registered. Some make only zero-rated supplies and some only supplies to provincial government agencies, who do not pay GST or HST. Others are partners in a partnership, where all of their commercial activity is reported through the partnership. Still others have made a section 156 "nil consideration" election with a closely related person and all of their taxable supplies have no tax collectible.
These persons will file "nil returns" with no GST/HST collected or paid or they will file refund returns, with only GST/HST paid in the course of their "commercial activity."

The ETA states in section 238 that a registrant must file a return, so a failure to do so results in compliance action by the CRA. However, where a registrant has filed dozens, or in some cases, hundreds of returns with no GST or HST ever reported, why do we see the CRA issue Notional Assessments for thousands of dollars of GST/HST owing?

We have CRA collectors wasting everyone's valuable time insisting on collecting these imaginary debts, when a review of the account will easily show there is nothing to collect. We can understand making a notional assessment with no ITCs granted, but crediting imaginary GST and HST collected where there is no evidence to suggest there would be tax collected is unreasonable.

Can we ask that the CRA show some restraint in making these ridiculous assessments when there is no evidence of net tax owing over many years of reporting?

CRA Response:

Our program has a strict policy regarding raising assessments on zero-rated suppliers or other businesses that do not collect GST/HST, but are required to be registered. Officers are not allowed to raise assessments in these situations.

Normally, our systems are set up so that such accounts will not even end up in a compliance officer's inventory, although long-term noncompliance may prove an exception to this. Therefore, occurrences such as those described in the question provided should not happen. We will remind our officers of our policy in this regard, again. If such a situation occurs, it should be brought to the attention of a manager in order to be addressed.

18. Non-Refundable Credits Created by 296(2.1)

The recent Pawlak decision dealt with the CRA auditing GST/HST returns that were filed late and that had a net tax refund. The CRA allowed statute-barred ITCs only to the extent they offset the GST/HST collected as reported in box 105 of the returns. The excuse was that 225(4) does not allow the ITCs, which is correct, but as the Tax Court pointed out, subsection 296(2) requires the Minster to allow those credits in full. However, subsection 296(4) says the Minister must use the credit to offset any amount owing that arose before the reporting periods or that arose within the statutory limits (usually four years) after the particular reporting period, or if there are no such debts, it shall be refundable if the ITCs or rebate would be allowable if claimed on the date of the assessment. This may mean there are credits that could be applied to debt (known or unknown) as allowed by 296(4) but that cannot be refunded by the CRA.

We know that if CRA leaves the refund (credit) amount on the GST/HST account, the system will automatically release a cheque if the person is compliant, unless the CRA puts a refund hold on the account. How is the CRA going to deal with this type of situation so that the credit is available to offset allowable debts, but a refund cheque is not issued by mistake?

CRA Response:

The debt has to already be in the CRA system for the credit to be applied.

Paragraph 296(3)(a) requires application of an overpayment of net of tax be first made to previous amounts owing (amounts on or before the person was required to file a return for the particular period) that remain unpaid or unremitted on the day the notice of assessment is sent to the person.

Paragraph (b) requires application be then made, with interest, to subsequent amounts owing (amounts after the person was required to file a return for the particular period) that remain unpaid or unremitted on the day the notice of assessment is sent to the person.

Paragraph 296(4)(a) also limits the application to amounts payable or remittable where the ITC would have been allowed as an ITC in determining the net tax for another reporting period if the person had claimed the ITC in a return filed on the day the person defaulted in paying or remitted the outstanding amount.

Paragraphs 296(3)(a) and (b) both limit application to amounts unpaid or unremitted on the day the notice of assessment is paid.

19. Line 105 Validation Review

The CRA is now sending out computer generated audits from the Winnipeg TSO that are the result of "the GST/HST collected on your total sales and other revenues does not correspond with the GST/HST rate from your business location." Translation: Line 101 times the GTS/HST rate for the registrant's address does not equal the amount on line 105.This is actually an efficient way to review files, since the registrant can provide a reconciliation and the process is relatively painless.

The form offers the person a chance to correct the return if the reconciliation shows that mistakes were made and while the person would be facing late payment interest, it brings to their attention a correction that is needed and allows it to be adjusted without a field audit. While it does not take the place of a full audit, if often results in a registrant consulting their sales tax advisor at an earlier time than otherwise and will afford the CRA the opportunity to have registrants improve their compliance and pay the correct net tax without the cost of auditing. It appears, however, that this process is only used for refund returns. While this is not objectionable, have you considered using the same process for payment returns? We cannot see that increasing the scope of this program would do anything but enhance the compliance of the GST/HST system.

CRA Response:

The Line 105 validation review examines GST/HST returns filed by taxpayers where the amount of GST/HST reported is less than expected based on the total sales and revenues reported for the period, provincial GST/HST rate, and the business location. Reviews are done on both credit and debit returns that meet these criteria.

This examination supports the Agency’s compliance mandate while educating taxpayers and ensuring future compliance.