Member Advisory
December 2007

2007 CRA Roundtable

The annual Canada Revenue Agency (CRA) Roundtable Meeting was held in May 2007. A number of CRA representatives were in attendance, along with representatives from the profession.

As in previous years, two concurrent roundtable sessions were held, one focusing on income tax matters and the other on GST issues. All participants also attended a general wrap-up session. General process and procedure tips were also discussed, including the training of CRA staff, access to working papers, payroll remittances and customer service.

For more information on the session, contact Al Budlong at a.budlong@icaa.ab.ca.

Income Tax Questions

Q1. Issue Resolution

In an effort to streamline the resolution of client issues, many firms request that following a submission to an auditor or to an Appeals Officer a discussion takes place prior to the file being finalized. From a practitioner's perspective, this ensures that the CRA officer handling the file fully understands the facts and technical position being presented and protects the taxpayer's right to resolve the issue at that stage. However, we have found that auditors and appeals officers often finalize their file before discussing the issue with us, resulting in additional fees for the taxpayer in having to move the issue up to the next level. This is particularly troublesome where the taxpayer has filed a Notice of Objection as the taxpayer is forced to incur substantial costs to appeal to the Tax Court or to "give up" where the tax involved is not significant in dollar value in relation to the potential legal fees. What is the CRA policy where such a discussion is requested by the taxpayer's representative and how does CRA make its officers aware of the potential financial impact of these types of actions on taxpayers?

Response:

If the taxpayer's representative wants to meet with us before the finalization of the audit or the appeal, we will generally accommodate such a request. In those instances where you feel your request for a meeting has not been adequately considered by the auditor/appeals officer, we ask that you contact their supervisor or the Assistant Director of Audit or the Chief of Appeals. We do not initiate these requests ourselves unless the taxpayer has made it clear to us that the issues should be discussed with the representative before finalization.

It is the taxpayer's decision as to the extent and nature of the representation provided by his accountant or lawyer. We would suggest that in the majority of cases the representative gets a copy of the proposal letter before the finalization, so they usually have enough time to respond. The representative can request an extension—such requests are always carefully considered. Even though an audit may have been finalized, the Audit Division is still prepared to accept late-filed representations or meet with the taxpayer's representatives to discuss the issues with a view to resolving them.

Q2. General Enquiries

We have noted an increasing inconsistency in the effectiveness of the General Enquiries Line. We regularly experience incorrect or incomplete information being provided by CRA staff. CRA staff inexperience results in

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wasted time for practitioners as we try to work with the CRA through its own systems by requesting call-backs or calling back until we find a CRA staff member who is able to help. There is also an inconsistency in the application of the "confidentiality" guidelines in the type and amount of information that must be provided in order to prove to the CRA staff member that the particular practitioner is authorized to deal with the file. What steps is CRA taking to ensure that its enquiries staff is adequately trained before assuming their position on the lines?

Response:
The Canada Revenue Agency takes the quality of service provided to taxpayers and their representatives seriously and continually monitors and reviews the service provided.

As a result of an extensive review of our filing season telephone enquiries, external surveys and training best practices over this past year, we have developed and begun implementation of national training standards and methodologies for new Individual Income Tax Enquiries Agents.

Q3. Business Correspondence
The new CRA policy of removing business correspondence services (i.e. Business Number registrations, filing elections, amalgamations) from the local tax service offices and centralizing the processing of such requests has made it very difficult for practitioners to action client requests in a timely manner. The main concern is that practitioners do not have the ability to contact a specific person at the processing centre. Instead, practitioners are to fax the request and then must contact the 1-800 number to obtain an update on the request. This process can sometimes take up to a week, which can lead to problems in urgent situations. Practitioners have provided a number of detailed examples of issues encountered with this policy (which we can provide if requested). We ask that the CRA provide contact details for key CRA staff in the offices that will be able to assist us. Furthermore, we request that CRA outline a process to deal with requests that are more urgent.

Response:
As of July 1 2006, all correspondence workloads in the Prairie region (business registrations, waivers, destruction of records requests, and other related items noted below) are being processed in the Prairie Regional Correspondence Centre, which is located in Saskatchewan.

This change in service will affect all individuals and businesses resident in the provinces of Manitoba, Saskatchewan, Alberta, and the Northwest Territories.

All requests received in Tax Services Offices in the region are being re-routed to the Prairie Regional Correspondence Centre. To avoid delays in the processing and to meet service standards, accountants and individuals are encouraged to submit requests directly to the Prairie Regional Correspondence Centre using the address or fax number noted below.

Prairie Regional Correspondence Centre
P.O. Box 557
Regina, Saskatchewan
S4P 3A3
Fax: 1-306-757-1412

Our goal is to respond to most types of correspondence within 30 days. If you haven't had a response after 30 days plus mailing time, you may call us at 1-866-218-4847. In addition, our Web-site (www.cra-arc.gc.ca) offers 24 hours a day, seven days a week access to a wide range of CRA electronic products, including forms.

The types of requests processed at the Prairie Regional Correspondence Centre include:

For Individuals:
Address changes
Direct Deposit requests
Requests for printouts
General correspondence
Individual account specific enquiries
Waivers
OAS Waivers
Certification of residency

For Businesses:
Business Number registrations and de-registrations
Requests to add a Program Account to a Business Number
Elections
Change of Fiscal Year End requests
Destruction of Record requests
Letters of Good standing
Employer Inquiries
Business Contact updates (telephone, address, ownership)
Direct Deposit Requests
Name changes
Internal Business Activity Forms
Capital Dividend account verifications
T2054 Elections

Q4. Business Number Registration
We have a number of concerns with the Business Number Registration process:

a) Members requesting numbers have received an error message indicating that they had exceeded the limit for requests for that computer. Is there a limit on requests made? If so, is there a way to have that limit increased in situations where practitioners are making requests for a number of clients?

b) Members and staff are concerned with having to provide their personal SIN to register a client. If the person requesting registration has already identified him/herself as a third-party representative working for an accounting firm, what is the benefit of obtaining the personal SIN?

c) The Business Number could not be obtained through an Internet application because the sole director was already associated with another Business Number. Furthermore, a telephone application could not be processed because this would need to come from an authorized representative. Since the corporation had no Business Number, an RC59 could not be processed even if one were available. CRA advised that forms RC1 and RC59 could be provided by fax to an Edmonton number, together with a copy of the Certificate of Incorporation and a covering letter indicating the urgent need for the Business Number. It was also advised that the reason for the urgency and the Business Number could be provided by telephone. After receiving the information, CRA also requested a listing of the corporate directors from Alberta Corporate Registry. As the Edmonton office was a call-center only, they were unable to process the request—it would have to go to a different location and could only be processed in a "service standard" of five business days. We note that once the appropriate party was contacted, the matter was resolved. However, this makes it difficult to deal with urgent requests.

d) On-line registrations for Business Numbers are available only where the individual associated with the registrant (proprietor, partner or director) is not associated with any other Business Number registrant. Thus, for example, where three individuals are affiliated with a corporation by virtue of having disclosed their SINs as directors, none of these three can register a new entity over the Internet, but must instead register by telephone, FAX or mail. As more clients need Business Numbers (even to open an account with a financial institution), the ability to register and receive the number is important to many entities. Can the Agency clarify the reasoning behind this restriction?

Response:

a) There is no set number or limit for requests. It is likely that one of the registration restrictions was triggered. These restrictions are identified on the BRO site.

Excerpt:

BRO is tailor-made for small- and medium-sized businesses that do not have complex registration requirements. While almost all Canadian businesses can use BRO, the service will not offer registrations if the following conditions apply:

- *You do not have a valid Social Insurance Number*
- *You have never filed an income tax return with the CRA*
- *You already have a Business Number registered in your name and wish to apply for another Business Number of the same structure in your name*
- *You need a GST account for a business with a mailing address in Québec*
- *You have a non-resident business and wish to apply for a GST account*
- *You wish to apply for a corporate income tax account for a business incorporated: federally with Industry Canada; provincially in Manitoba; provincially in Nova Scotia; or provincially in British Columbia*
- *You wish to create a third account within the same program (eg., third GST account) and*
- *You wish to register a bare trust.*

b) Third parties do not have to supply their SIN. Only the SIN of the directors/owner should be supplied when filing via paper or BRO to prevent duplication.

c) The request should be sent to Regina and marked urgent. Have the client write "URGENT" on their request, along with an explanation of why they need it urgently (i.e. real estate transaction), and fax it to 306-757-1412. Client must ensure they provide pertinent documents (RC1, Corporate certificate, List of Directors and RC59) and ensure they are properly filled out.

d) Allowing this scenario on-line could lead to account duplication, which is why it is a restricted function. Much effort is placed on the prevention of duplication because it causes confusion for both the Taxpayer and the Agency.

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- *You wish to create a third account within the same program (eg., third GST account) and*
- *You wish to register a bare trust.*

Q5. Internet Access to Client Data
The "Represent a Client" portal on the CRA Web-site is an excellent tool for providing limited access to clients' T1 information and balances carried forward.

a) Please advise as to whether there are any planned improvements over the course of the next few years—specifically, would it be possible to access information on T-slips that have been filed? This would allow preparers to do a quick check to see if a T-slip that the client does not know about is in the system. Will additional historical information for individual taxpayers become available?

b) Please provide an update on when similar access can be expected for corporate tax clients. Carry-forward balances as well as account balances and remittances would be useful information to add.

Response:
a) CRA is continually making enhancements to our on-line services, based on our users' feedback. As a result, making information slips available through Represent a Client has been identified as a priority and is currently being worked on.

b) Similar to question a), allowing representative access to Business/Corporate accounts has also been identified as a priority for our clients. This capability is currently being tested and reviewed.

Q6. CRA Requests for Taxpayer Information
We feel that CRA staff place often unreasonable deadlines on taxpayers. For example, a taxpayer may be given a very short notice (eg., one week) of an audit commencement. Following completion of the field work by the auditor, the taxpayer may not hear from the auditor again for several months, until the taxpayer receives the proposal letter. Many proposal letters only allow the taxpayer 15 days to respond. Factoring in mailing time leaves even less time for the response. The short response may be predicated on the need to finalize the file, but such short response times are inappropriate where a delay in closing the file is the result of the auditor's inaction. What are the CRA guidelines to ensure adequate time-frames are provided to taxpayers and their representatives to respond to information requests and proposal letters?

Response:
The Canadian public and the CRA have a mutual interest in making sure our audits are conducted efficiently and concluded in a timely fashion. We strive to establish a relationship based on co-operation, openness, and transparency—key factors in an efficient audit.

The time an audit takes depends on the state of your accounting records and related documents, as well as the size and complexity of your business. Your co-operation will help keep this time to a minimum.

The auditor begins the audit by giving you information about the scope of the audit, what years will be covered, how much time the audit may take, and what information the auditor will need from you to do the work. At this initial contact, you and the auditor will select a mutually convenient time to begin the audit.

During the audit, the auditor will identify issues and discuss them with you. You can also raise your concerns with the auditor at any time.

The auditor will discuss any proposed adjustments and explain the rationale for them. The auditor will give you a reasonable amount of time (usually 30 days) to respond to the proposal.

Before finalizing the audit, the auditor will carefully consider your explanations and respond to your questions about the findings. If issues remain unresolved, you can contact the auditor's supervisor to discuss them further.

From "What You Should Know About Audits" RC4188 Rev 05

Q7. Child Fitness Tax Credit
Will the CRA be creating a standard form to set out what expenses and documentation will be acceptable to the government in order to claim the new Child Fitness Credit?

Response:
Starting in 2007, individuals may claim a non-refundable tax credit for eligible fitness expenses of up to $500 per child who was under the age of 16 at any time in the year. Under proposed legislation, an additional amount will be available for individuals with children who are eligible for the disability tax credit.

In general terms, an eligible fitness expense is a fee paid in the year that is attributable to the cost of registration or membership paid to an organization (person or partnership) that offers one or more programs of prescribed physical activity. Registration and membership costs can include the costs of administration, instruction, the rental of facilities, and uniforms and equipment that are not available to be acquired by a participant in the program for an amount less than there fair market value at the time they are acquired. If the fees charged to parents include a part for accommodation, travel, food, or beverages (for example, room and board at a fitness camp), then this part must be deducted when calculating the part of the fees that qualify for the tax credit.

The Department of Finance has indicated that, in order to qualify for the tax credit, a program must be:

- Ongoing (either a minimum of eight weeks duration with a minimum of one session per week or, in the case of children's camps, five consecutive days);
- Supervised;
- Suitable for children; and
- Substantially all of the activities must include a significant amount of physical activity that contributes to cardio-respiratory endurance plus one or more of: muscular strength, muscular endurance, flexibility, or balance.

The following are examples of activities that would not qualify:

- Activities where riding in or on a motorized vehicle is an essential component of the activity
- Activities occurring as part of regular school physical education programming
- Self-directed activities

Individuals should retain receipts that support their claim for eligible fitness expenses. Note: Organizations will determine the portion of the fee that qualifies for this credit. We have updated our Web-site with a checklist to assist them with this.

The receipt an individual receives should contain the following information:

- Name and address of the organization
- Name of the eligible program or activity
- Total amount received, date received, and the amount that is eligible for the Child Fitness Tax Credit
- Full name of the payer
- Name of the child and child's year of birth
- Authorized signature

In the case of electronically generated receipts, an authorized signature is not required.

At this time, no special form is anticipated. The CRA is using existing tax products and its Web-site to communicate information related to this tax credit.

The CRA is currently reviewing the need for a publication to provide more information on this credit.

Q8. Trust Distributions to Corporate Investors—ACB Adjustments
CRA's technical interpretation, 2005-0159081I7 (E), published in March, 2006 dealt with the timing of the income inclusion for a corporate taxpayer which is a trust beneficiary, where the corporate taxpayer had a different year end than the trust. The interpretation concluded that income allocated by the trust was to be included in the corporation's income in the fiscal year in which the December 31 year-end of the trust falls. However, the technical interpretation did not appear to specifically deal with the related ACB adjustment provided for in subparagraph 53(2)(h)(i.1).

The following example will be used to illustrate the issue in question.

A corporate taxpayer with a November 30 year-end invests $1,000,000 in 100,000 units of a money market trust fund in the last few months of its fiscal year. Each month it is allocated an interest distribution from the trust, which shows up in the form of more units and will ultimately show up on a T3 slip as other income. Near the end of its fiscal year,

it disposes of what are now 105,000 units for $10 each for a total of $1,050,000. Shortly after the calendar year-end, it receives a T3 slip showing that it was allocated $50,000 of other income by the trust, and it will report this other income in the following fiscal year (i.e. the year in which the taxation year of the trust ends).

However, the corporation has to file a tax return for its November fiscal year-end including the disposition of the trust units. Is it required to report a capital gain of $50,000 in that year followed by a capital loss of $50,000 and $50,000 of other income in the following year, or does it report no income or capital gain in the first year, carrying the $50,000 as a deferred income item on its balance sheet followed by $50,000 of other income in the second year, or is there some other treatment that is required under the scheme of the Act?

Response:
Clause 53(2)(h)(i.1)(A) of the Act provides that there is no decrease to the ACB of the capital interest in a trust if the amount payable to a beneficiary is included in the income of the beneficiary by reason of subsection 104(13).

In your example, income of $50,000 is to be reported in the corporation's tax year in which the trust's taxation year ends. As the amount payable is included in the corporation's income under subsection 104(13), there is no decrease to the ACB of the capital interest in the trust. Therefore, the disposition would be recorded in the current year and there would be no resulting capital gain or loss as the proceeds of disposition and the adjusted cost base are the same.

Q9. Communication with CRA
There are a growing number of cases where a client has to deal simultaneously with several CRA officers in different TSOs often without any coordination or knowledge of the other CRA officers. This may be because of outstanding returns, late payments, notional assessments, balances owing on the filing of T4 Summaries or unpaid installments. To provide some coordination of communication by the various CRA offices, would CRA consider having collection accounts resident in the local TSO who would be able to use the various resources, but with one person overseeing the communications with a particular taxpayer?

Response:
We strive to assist taxpayers in complying with their legal obligations and requirements while providing the best possible service in a financially responsible manner. As with many large volume organizations, geographic location is no longer a key issue in delivering some of our services and activities. As an organization that deals with a multitude of situations and policies, there is a benefit in centralizing and specializing certain aspects of our program delivery. It is understood, however, that a single point of contact is at times appropriate and necessary for the effective handling of specific files.

Taxpayers or authorized representatives can contact any of the Revenue Collections and Taxpayer Services Managers provided on the contact list and the assigning of a single officer as a point of contact may be possible, should the circumstances involved lend themselves to a central contact. Collections accounts being handled by one of our national pool sites may be transferred into the local office where deemed necessary or beneficial.

Q10. Employee Profit-Sharing Plans
Given the recent decision in the Allan Greber Professional Corporation case regarding Canada Pension Plan contributions not being applicable in respect of a properly established and administered employee profit-sharing plan, what is the future assessing position of the CRA with respect to employee profit-sharing plans established by private corporations?

Response:
Canada Pension Plan contributions are not applicable on properly established and administered employee profit-sharing plans. There has been no change to the assessing position based on the Greber case.

Employee profit-sharing plans will continue to be reviewed on a case-by-case basis.

Supplementary Question
If the employees (husband and wife) had salaried themselves $40,000 and had contributed the max to CPP and EI, would we then consider the EPSP to be valid?

Response:
The validity of an EPSP will be challenged and accepted based on the facts of each particular case. The fact that CPP and EI are contributed to the maximum does not alone make the EPSP valid for income tax purposes under Section 144 of the *Income Tax Act*.

Q11. Leases
Is CRA's current assessing policy related to leases accurately reflected in *Technical Bulletin 21* when considering leases with a bargain purchase option that, given the cost of exercising the option, will almost certainly be exercised?

Response:
The Supreme Court held, in *Shell Canada Limited v. The Queen, 99 DTC 5669, [1999] 4 CTC 313*, and other decisions, that the economic realities of a situation cannot be used to recharacterize a taxpayer's bona fide legal relationships. The Court held that, absent a specific provision of the *Income Tax Act* (the Act) to the contrary or a finding that there is a sham, the taxpayer's legal relationships must be respected in tax cases. Thus, generally and subject to the general anti-avoidance rule (GAAR), recharacterization is permissible only if the label attached by the taxpayer to the particular transaction does not properly reflect its actual legal effect.

The CRA announced in *Income Tax Technical News (ITTN) No. 21*, dated June 13, 2001, that "…it is our view that the determination of whether a contract is a lease or a sale is based on the legal relationships created by the terms of the particular agreement, rather than on any attempt to ascertain the underlying economic reality. Therefore, in the absence of a sham, it is our view that a lease is a lease and a sale is a sale. However, notwithstanding the legal relationship, GAAR may be used to assess cases in which there is an avoidance transaction that results in a misuse or an abuse of provisions of the Act."

While *ITTN No. 21* has been archived, the comments contained therein continue to reflect the CRA position.

Q12. Audit/Appeals Issues
Please provide a list of the most common types of adjustments arising out of audits of corporations. In that regard, could the CRA please provide the current focus issues for GAAR reassessments? Please also provide a list of the most common types of audit adjustments that are reversed in favour of the taxpayer at the Appeals Division.

Audit Response:
Common type of audit adjustments of corporations:

- Standby charges for shareholders and employees and related GST
- Inclusion of unreported income and related GST
- Expenses and input tax credits disallowed that lack supporting documentation
- Personal expenses disallowed
- Shareholder benefits assessed
- Capital gains vs. income issue
- Recovery of exploration and development expenses
- Employee benefits assessed
- Adjustments to Input tax credits that were not pro-rated when the business provides both exempt and taxable supplies
- Adjustments to Input tax credits for failure to recapture 50% of ITCs on meals and entertainment expenses
- Capital expenditure vs. Current expense
- Capital loss vs. Allowable Business Investment Loss (ABIL)

Appeals Response (Edmonton):
The Appeals Division handles Notices of Objection in all ranges of Corporations, including those from the Audit Division.

An Appeals Officer's decision may involve vacating (reversing), varying or confirming audit results. A single file may involve multiple issues, each of which will have its own separate outcome, and some adjustments may simply be to reallocate income, expenses or outlays to another period. Additionally, there are no "common reversals," as each Appeals decision is based on the specific facts, legislation, and jurisprudence relating to the issues in dispute.

Tax Avoidance Response:
The most common types of adjustments arising out of audits of corporations focusing on the application of GAAR are:

- creation of artificial capital losses
- surplus stripping (domestic and non-resident)
- inter-provincial tax avoidance arrangements
- manipulation of tax accounts or attributes:
  - Adjusted Cost Base
  - Paid Up Capital
  - Exempt Surplus
- foreign non-business income tax deductions created through tower structures
- avoidance of Section 80

Q13. Civil Penalties Update
Please provide an update on civil penalties that have been proposed or assessed, noting the types of circumstances in which they were proposed.

Response:
As of May 1, 2007 a total of ten cases have been proposed for third-party penalties. Of these eight were approved and have been assessed, while two were rejected. The ten cases that have been considered can be broken into five categories as follows:

- Fictitious Amounts (T4s; Business, Farming and Rental Losses; Employment Expenses): 5 cases
- Appropriations of Funds/Invalid Journal Entries: 2 cases
- Donation Arrangements: 1 case
- Discounted Returns Without Taxpayer Knowledge: 1 case
- Deceptive Fair Market Value: 1 case

For detailed information with respect to the application of third-party civil penalties, pursuant to section 163.2 of the *Income Tax Act* and section 285.1 of the *Excise Tax Act*, we recommend you refer to *Information Circular 01-1, Third-Party Civil Penalties*.

Q14. Acquisition of Control Relieving Provisions
Subsection 256(7) of the *Income Tax Act* provides certain relieving provisions whereby control of a particular corporation is generally deemed not to have been acquired if the shares are acquired by a person who is related to the person from whom the shares were acquired. As well, paragraph 256(7)(a)(ii) provides that control of a corporation will be deemed not to have been acquired solely because of the redemption of shares where each person that controlled the particular corporation immediately after the particular time was related to the corporation immediately before the redemption of shares.

Would you confirm that the saving provision contained in paragraph 256(7)(a)(ii) will apply in the following situation:

- The shares in a private corporation are owned by one individual.
- The corporation repurchases all of the shares in the corporation owned by the shareholder for proceeds equal to the fair market value of the shares.
- Immediately after the repurchase of the shares, an adult child of the former shareholder subscribes for and is issued all of the new outstanding shares in the share capital of the corporation.

Response:
We are reviewing the above situation and therefore we are not in a position to provide a response at this time.

Q15. Trust Deemed Disposition
Subsection 104(4) provides for a deemed disposition at fair market value of all property owned by a trust which, generally speaking, occurs 21 years after the day on which the trust was created. In the event that the deemed disposition is not reported on the tax return for the trust for the year in which the disposition is deemed to occur and more than three years have passed since the Notice of Assessment was issued by the Minister of National Revenue in respect of the particular taxation year, would you please comment upon the following issues:

- whether the property owned by the trust has a bumped up adjusted cost base notwithstanding that the deemed disposition was not included on the applicable income tax return;
- whether the Canada Revenue Agency is entitled to reassess the applicable income tax return pursuant to subsection 152(4) of the Income Tax Act;
- the ability of the trustees to make a voluntary disclosure;
- any impact on the issuance by the Canada Revenue Agency of a clearance certificate to the trustees of the trust; and
- any other issues that may arise.

Response:
The situation described herein appears to be a factual situation. Accordingly, it is the CRA's practice not to publicly comment on such situations.

Q16. Date-Stamping Returns
The new CRA policy of stamping a sealed envelope does not always meet the needs of our clients. Particularly, now for GST returns under the new standardized accounting rules there is a late filing penalty, so there will be instances where a client will require confirmation that a return has been delivered to CRA on-time in order to avoid any penalties. Traditionally this has been accomplished by date-stamping a copy of the returns. Please advise which policies practitioners should follow to avoid such penalties.

Response:
The Calgary and Edmonton Tax Services Office Counter Staff will date-stamp all CRA required documents including GST returns. If the returns are presented individually,

they will be stamped individually. If they are bundled and presented in a batch only the outer envelope/box will be date-stamped.

In the event that a GST return is being presented with payment attached, the cash office will accept the payment and the return and provide a date-stamp, or the client may pay their financial institution.

Q17. Filing Obligations for Dormant Companies
When an owner-managed corporation ceases operation, it is rare for the owner to incur the costs of formal dissolution. As a result, the corporation commonly continues to exist for months or years after ceasing operations, dormant until it is struck for failure to file annual returns.

In the past, CRA commonly did not enforce the requirement that the corporation file returns for these dormant periods. This administrative practice seems similar to the CRA's policy for dormant trusts and for partnerships which have less than six partners, all of whom are individuals. Recently, however, CRA has begun demanding these returns be filed.

There does not appear to be any benefit to either the taxpayer or the Treasury in requiring dormant corporations with no assets or liabilities to file tax returns and having the Agency incur the costs of processing them. Would the Agency consider reinstating its policy in respect of such returns or, alternatively, creating a simplistic "Dormant Corporation" tax return which the taxpayer could file to indicate the company has no assets or liabilities and has had no transactions since the previous year end?

Response:
All corporations, including inactive or dormant corporations, have to file T2 returns. An inactive corporation may be subject to tax if it disposes of a building or other assets so CRA still requires filing of the T2 return, balance sheet and income statement.

Although we continue to pursue filing options that would simplify obligations for corporations, at the present time an inactive corporation may file a T2 Short Return with nil financial statements and mark "Yes" at field 280 on page two to indicate they are "inactive."

Q18. Interest Deductibility
The recent federal Court of Appeal decision in Lipson (2007 FCA 113) adds uncertainty to the issue of interest deductibility. Can CRA comment on how the Lipson decision impacts their assessing practices in this regard? We would suggest the following scenarios may be illustrative.

a) In the Lipson case itself, Mr. L sold shares of a family company to Mrs. L. Mrs. L funded the purchase with arm's length debt. Mr. L used these funds to acquire a personal residence. The shares were transferred at income tax cost pursuant to Subsection 73(1) and, as a consequence, the attribution rules applied to attribute all income (including the interest deduction) and capital gains realized on these shares. The FCA upheld the TCC's decision that GAAR applied to deny any deduction for the interest.

b) Assume the same facts as the Lipson case, except that Mr. L elects that Subsection 73(1) not apply. He reports capital gains on the shares transferred, based on their fair market value. As a consequence, the attribution rules do not apply, and any deduction for interest is claimed by Mrs. L.

c) Assume that Mr. L owns an investment portfolio, and sells that portfolio to finance the purchase of a residence (or repayment of an existing mortgage). He later borrows and reinvests in portfolio securities. Does the CRA consider the Lipson case to indicate this interest is non-deductible? Does the Agency's answer vary depending on whether the new borrowing and investment occurs:

- within 24 hours of the sale of the portfolio
- 31 days after the sale of the portfolio
- one year after the sale of the portfolio
- five years after the sale of the portfolio

d) Similar to scenario (c), Mr. L sells an investment portfolio to fund a personal expenditure. He then reborrows, and invests in shares of Holdco, a wholly owned corporation, and Holdco purchases investments:

- directly from Mr. L (ie., the portfolio never leaves his control)
- within 24 hours of the sale of the portfolio
- 31 days after the sale of the portfolio
- one year after the sale of the portfolio
- five years after the sale of the portfolio

e) Would the CRA now consider that GAAR would apply in a case similar to the Singleton case (*2001 DTC 5532*), where a partner in a partnership withdraws his capital, uses the funds for personal purposes, and then borrows to re-invest in the partnership?

While we realize that any response to the above must be hypothetical as each case will hinge on its facts, comments of a general nature will assist taxpayers and their advisors in understanding CRA's views in this regard and in planning their affairs accordingly.

Response:
The Agency is currently reviewing its position in light of the decision in the Lipson case and therefore is unable to comment at this time.

Q19. Use of CRA Web-site and Change in Firm Name
Where CRA's records do not associate the correct firm name with the firm's GST number, the Represent a Client service would not permit access to any client's information. We would note that the registration process does not indicate that there is any problem if the name on the T1013 forms does not precisely match the name associated with that GST number. Should a firm change its name, there are considerable steps which must be followed. New T1013 forms must be obtained for every client of the firm reflecting the new name. The name affiliated with the firm's Business Number must be changed. The firm must re-register itself under the new name. Presumably, this will require cancellation of the old registration so there are not multiple "firms" associated with the same Business Number. While all of this is in progress (including the time it requires CRA to process the name change), information related to clients will be inaccessible. This could be easily avoided by providing firms the ability to change their name on line, with that new name flowing through to all applications affiliated with that Business Number. Previously processed T1013s would then transfer to the new firm name, while new T1013s would reflect the current firm name.

Overall, we believe that on-line access to information provides for significant benefits to both practitioners and the Agency. However, practitioners' access to the systems needs to be facilitated if they are to change the way they have always done business, while still maintaining the integrity and security of CRA's systems and taxpayers' confidential information.

a) What, if any, action is CRA prepared to take in order to reduce the costs and administrative problems in accessing My Account as representatives?

b) Would CRA consider a "focus group" approach—representatives of taxpayers and taxpayer representatives who might be asked to register for and use CRA's various electronic services and provide feedback as to their ease of use and utility on a timely basis, rather than leaving CRA's primary feedback from system users in the form of complaints at sessions such as these?

Response:

a) Canada Revenue Agency encourages and appreciates all feedback from our end-users on the functionality and user experience of our on-line services. This feedback is used to determine needs and planned enhancements for future releases. The Represent a Client group specifically continues to hold outreach sessions with their end-users. We remain in consultation with target groups. For program or account specific enquiries such as detailed above, the e-service Helpdesk is available for technical assistance at 1-877-322-7849 Eng / 1-877-322-7852 Fr. As a result of your feedback we have forwarded your concerns for consideration.

b) The CRA does engage in focus testing as one method of evaluating their current electronic services and future enhancements to those services. Prior to launching the on-line "Represent a Client" service, focus testing was done in Toronto, Calgary, Halifax and Montreal in February of 2004. The results from those tests were one method used to help shape the current service for representatives. As enhancements are introduced to the "Represent a Client" service, similar focus testing and consultations with tax professionals, along with other forms of feedback, are done and evaluated to help ensure that the services being offered remain user-friendly, while delivering the desired information in a secure, easily-accessible on-line environment. Similar consultations with target groups were planned for summer 2007.

Q20. Tax Shelter Information
For many years, taxpayers have been required to file Form T5004 disclosing their involvement in tax shelters pursuant to subsection 237.1(6). That subsection provides that "no amount may be deducted or claimed by a person in respect of a tax shelter unless the person files with the Minister a prescribed form containing prescribed information, including the identification number for the tax shelter." In this regard:

a) Does CRA consider there to be a deadline for filing this disclosure? The provision makes no mention of inclusion of the form with a tax return, or of any deadline.

b) Would CRA's willingness to accept a T5004 filed after the due date of the tax return in which the related claims are made vary depending on whether the taxpayer filed

the form prior to any audit activity by the Agency or sought to file it after the omission was discovered?

c) Where the results of the tax shelter are ongoing, does CRA believe the form must be filed:

i.) in each year in which the tax shelter has an impact on the return (for example, in each year in which a loss or credit arising from a prior claim and carried forward modifies the taxpayer's return)

ii.) in each year in which the taxpayer reports an amount arising directly from the shelter (for example, in the year a loss or credit arises from the shelter, but not in years where amount carried forward from that initial amount are claimed).

d) We would appreciate details of the basis for CRA's conclusions in respect of the above.

Response:

a) The prescribed form, the T5004, is filed with the taxpayers' returns. The T5004 just summarizes the T5003s issued to that taxpayer. As indicated on the T5004, the T5003s should be attached to the form. Note also that if the tax shelter is a partnership, the T5003 is replaced by a T5013 but the same provisions apply with respect to the T5004.

b) Subsection 237.1(6) provides that "no amount may be deducted or claimed by a person in respect of a tax shelter unless the person files … a prescribed form." If the form is not filed and CRA is aware that this deduction is related to a tax shelter, the deduction can be denied. The CRA has no position regarding the other situations.

c) i.) Yes, because the provision states no amount may be deducted or claimed. The taxpayer should file the T5004 with the T1 and attach the related T5003 which may have been issued by the tax shelter in a previous year.

We would like to clarify the question with an example:

Taxpayer acquires a tax shelter in 2003; a loss of $50000 is allocated from the tax shelter in 2004, but nothing is claimed in 2004; taxpayer claims the loss in 2005.

The promoter must report on a T5003/ T5013:

- the sale in 2003;
- the loss allocated in 2004

The promoter will not know when the taxpayer claims the deduction so it cannot issue anything in 2005.

The taxpayer must include the T5004 with the attached T5003/T5013 to claim the loss in 2005. That's the first example given, not the second.

ii.) No, see above.

d) The basis is subsection 237.1(6), which provides that "no amount may be deducted or claimed by a person in respect of a tax shelter unless the person files with the Minister a prescribed form containing prescribed information, including the identification number for the tax shelter."

Q21. Application of Foreign Investment Entity Rules

For several years, the proposed Foreign Investment Entity rules were to be effective for years after 2003. That has now been changed to years after 2006 and taxpayers have been advised to request amendments to their returns where they followed the advice of the CRA and Department of Finance and filed in accordance with the rules as proposed. In some cases, clients are not dissatisfied with the results of applying the rules from 2004 onwards. Would the CRA permit such taxpayers to retain the results of applying those provisions from 2004 onwards? Alternatively, would CRA be prepared to recommend to Finance that the final legislation incorporate an ability for taxpayers to elect that such rules apply to all years subsequent to 2003?

Response:

Bill C-33 has been amended to allow a taxpayer to elect to have the proposed foreign investment entities provisions apply to taxation years that begin after any of 2002, 2003, 2004 or 2005 if the taxpayer elects, in writing, to have sections 94.1 to 94.4 of the Act apply to the taxation years that begin after the year specified in the election. They must also file the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year in which this Act is assented to. However, the election is subject to the various application provisions based upon the taxation year that the election relates to.

Q22. Form T1013

It is our understanding that the CRA will not process a T1013 form dated more than six months previous. It is not uncommon for these forms to be sent by fax to the Agency and not be processed. The inability to re-send the form when this lack of processing is discovered is quite frustrating. The T1013 form is quite clear that it applies in perpetuity unless the taxpayer states an expiry date on the form. With this in

mind, we would ask why the Agency has adopted this policy and whether they might revisit this issue and consider, if not removing any such time limit, at least applying a longer time limit, such as a year or 15 months, to facilitate having clients sign new authorization forms annually.

Even when authorization is on file, we are finding that CRA is requiring more and more information to answer questions posed by telephone. Would the Agency consider adopting a standard approach to verifying representative identification without undue time requirements and provide this procedure to both taxpayer representative and their own personnel?

Response:
Please find the following information regarding the 6-month stale-dated policy for the signature on the T1013, *Authorizing or Cancelling a Representative*.

> *The CRA is governed under the National Revenue Act, including the* Income Tax Act. *In that regard, the six-month policy was made after considerable review and consultation. There was concern that dated requests most likely did not reflect the taxpayer's current wishes, nor was the T1013 required at a later date as the business between the representative and the client had already been completed.*
>
> *It was decided that six months was a reasonable timeframe for the representative or taxpayer to submit a current and valid T1013. One of CRA's overwhelming concerns is ensuring the taxpayer's confidential information is protected and potentially unwanted authorization is not updated to a taxpayer's account.*
>
> *You should note that information pertaining to the policy change was widely publicized during presentations from the CRA to various accounting communities in 2005 and 2006. Also, a video for tax professionals is now available on the CRA Web site, including information about Form T1013 and the six-month policy. Furthermore, we currently have information on this policy on an FAQ page on the CRA Web-site and there is also a notice posted on the page where the current T1013 can be downloaded. As well, it is noted clearly under the signature block on the T1013 form.*

Q23. Partnership Returns
In the past, CRA has generally not enforced the filing of the *Partnership Information Return* (T5013) for partnerships of less than six partners, absent a tiered partnership structure or purchase of flow-through shares by the partnership. However, in the *2006 Guide for the T5013*, CRA indicated that only partnerships who have no corporations or trusts as partners qualify for this exemption from filing. A recent *Technical News* item advised that this comment was in error. Accordingly, could CRA please state the current policy for partnership return filings, clarifying specifically the filing requirements for partnerships of less than six partners?

Response:
At this time, we are considering a change to our administrative policy; however it has not been implemented. We will provide sufficient notice to allow affected partnerships the time to make the required changes to meet their obligations.

(Information was found on the Web-site under T5013 and in the "What's New" newsroom.)

Q24. Blank Responses on Election Forms
Forms such as the T2057 and T2059 have numerous questions with responses of "Yes" or "No." Several of these questions are inapplicable in some cases (for example, "If yes, does a formal documented V-Day value report exist?"). When the question does not apply, the Agency commonly contacts the preparer to ask why it has been left blank.

Would the Agency consider adding a box for "Not Applicable" on questions where this is commonly the appropriate response?

Response:
We have noted your concerns and have forwarded them to the appropriate division for their consideration.

Q25. CCA Budget Proposals
One of the recent measures introduced by the budget this year was a temporary measure that increased the CCA on M&P equipment acquired on or after March 19, 2007 but before January 1, 2009. For M&P equipment acquired during this period that falls under Class 43, the CCA rate went from 30% declining balance to 50% straight-line. What this means for M&P equipment acquired during this time is that a full tax write-off can be realized in 3 years.

The budget states that Class 43 M&P equipment acquired on or after March 19, 2007 and before January 1, 2009 is eligible for the accelerated CCA rate. If the assets being acquired during this time are already constructed and complete, taxpayers will generally have "acquired" the asset at the earlier of when title passes, or when all incidents of ownership (namely possession, use and risk) have been passed to the purchaser. If the earlier of these two events is before January 1, 2009, the asset should qualify for the enhanced rate.

However, in cases where the M&P equipment is a major asset that needs to be built or fabricated, then it is more difficult to determine the time the asset is "acquired." The CRA policy seems to be that it is "acquired" when it is in a "deliverable state." Can you confirm how the CRA will treat M&P equipment that is ordered long before January 1, 2009 but, due to circumstances beyond the purchaser's control, is received or is fully functional after December 31, 2008? For example, if a piece of equipment normally takes six months to manufacture, will a delay on the delivery of one week into 2009 cause it to fall outside the incentive program?

Response:
As this is in respect to recent legislation, we are not able to provide a response at this time. We will take the question under advisement.

Q26. RRSP Over-contributions
Since the CRA has created a special team of staff to deal with the over-contributions of RRSPs across Canada, we believe the form of the Notice of Assessment can be improved to properly show all taxpayers the 'net' RRSP contribution amount in a more direct fashion.

Currently the assessments only show two RRSP-related amounts, the gross RRSP room and the gross unused contributions available for deduction. Another item that makes the form even less useful is the fact that the numbers appear on opposite sides of the form. If both numbers appeared on the right hand side of the form (as done already for the RRSP room), with an additional net amount also shown, this would help inform all taxpayers in a more clear and concise manner.

If the CRA has already contemplated such a change, please include in your reply the timing of when these changes will be put in place and how the form is expected to change.

Response:
In prior years, the Notice of Assessment was designed so that both the amount of the RRSP Deduction Limit and the amount of Unused RRSP Contributions Available appeared on the right hand side, as suggested. The feedback from taxpayers indicated this format was confusing and, in many cases, was the reason for them making excess contributions. As a result, the statement was redesigned to the current format.

With respect to showing an additional net amount, the amounts currently appearing on the RRSP Deduction Limit Statement are based on assessed information provided by taxpayers on their income tax and benefit returns. These amounts incorporate contributions made up to 60 days after the end of the calendar year. It is possible that a net RRSP contribution amount could generate further confusion as taxpayers may view it as being the amount that can be contributed upon receipt of the statement, regardless of any additional contributions that may have been made.

At this time, we do not expect to make changes to the RRSP Deduction Limit Statement appearing on Notices of (Re) Assessment.

Q27. Stock Option Gain Relief
The January 13, 2007 issue of the *National Post* noted that Gary Lunn, Minister of Natural Resources, announced that employees of JDS Uniphase would have the interest and taxes on a stock-option gain forgiven. For example, if an employee is given an option to purchase one share at two dollars per share and two years later the option is exercised when the share price is $402, the employee receives an employment benefit equal to $400. If the stock should drop back down to two dollars, and the taxpayer sells for two dollars, the employee would have a $400 capital loss, which is only deductible against capital gains.

What type of relief was provided in the JDS situation? Will similar relief be provided for individuals caught in similar circumstances? Is the relief to be limited only to the employees of JDS Uniphase?

Response:
CRA is not able to comment at this time.

Q28. Offset Provisions
We understand that CRA has offset provisions with certain government programs, such as unpaid student loans, where personal income tax refunds are withheld and paid to the creditor. Is there a list available of the programs and situations where CRA withholds personal income tax refunds from taxpayers and remits them to the creditor? Are there any similar offsets for corporate refunds?

Response:
There is a large number of Crown or federally-administered debts that may be set-off from personal or corporate income tax refunds. Any federal, provincial, or territorial department, agency or Crown Corporation may participate in the Refund Set-Off (RSO) Program. The debt must be owed to the Crown and each partner that participates in our program must enter into an agreement with the CRA that outlines the conditions and procedures that must be met in order to participate. Taxpayers loaded in our RSO program are usually sent a notification letter advising them of their debt and provided with the client-partner contact information.

Taxpayers can also contact CRA and they will be provided with the program's client contact information to obtain more information on their debts.

Partners in the RSO Program are responsible to maintain accurate information on their clients' accounts; however they all have different procedures, systems and timeframes to transmit information and updates to CRA. We are governed by the *Income Tax Act* and the *Excise Tax Act* as well as the *Financial Administration Act*. Prospective partners wishing to set-off refunds are required to ensure the following:

- The client is liable, the debt is legally collectible and every reasonable attempt has been made to collect the debt by other means.
- The amount being sought by way of set-off is not currently being litigated or appealed by the client.
- The originating department has taken reasonable steps to inform the client of the possible set-off prior to making the request to Canada Revenue Agency.
- The originating Department will advise Canada Revenue Agency immediately if the debt is collected by some other means, subsequent to the request for set-off.
- The originating Department will not request payment by way of set-off where such measures will cause economic hardship to the individual.
- The amount of the outstanding debt is greater than $1,000.

A list of RSO partners is not available for distribution. While the vast majority of set-offs are on individual income tax refunds, corporate refunds can also be set-off.

Q29. Penalties

a) Subsection 163(1) applies a 10% federal penalty for the second case of an unreported amount in a three-year period. Often these are the result of a late or amended T3, T4, T5, T5013, etc. If a taxpayer has prepared a T1 Adjustment would the penalty still apply?

Also, the initial unreported amount may be a very minor amount but, nevertheless, still triggers the 10% penalty for the subsequent event. Many of these T1 Adjustments are a result of poor reporting by the various agencies. Does CRA have any relief with respect to this penalty?

b) Where a taxpayer has inadvertently made an excess RRSP contribution over the allowed $2,000, perhaps because of an incorrect recommendation by an arm's-length third party, does CRA have any guidelines with respect to relief for the one percent monthly tax because of subsection 204.1(4)?

c) If a person has not been filing the T5018 construction contractor reporting form, but commenced to do this in 2007, would the CRA request the previous forms back to 1999 and assess a $2,500 penalty per year? If so, is it advisable to proceed through the Voluntary Disclosure Program? Will the forms that are not yet one year late be allowed under the program?

Response:

a) If the Form T1ADJ was submitted by the taxpayer or their representative and processed prior to the Agency's adjustment to include the unreported income, the 163(1) would not be applied. If the Form T1ADJ was submitted by the taxpayer or their representative prior to the Agency's adjustment, but only actioned after the Agency's adjustment, we would cancel the penalty if applied.

An omission penalty would not be applied in situations where the reassessment results in a Nil notice of reassessment or a refund, and the refund is due to amounts related to the omitted income. For example, if the tax deducted on a T4A caused a refund to be issued even after the income from the T4A has been added to the return, a penalty would not be applied. A penalty would also not be applied in situations where the taxpayer is not, nor would be, required to file a return under subsections 150(1) or 150(2) once the omitted income has been included or if they were missing the slip but tried to estimate the amount.

In all other cases the *Income Tax Act* provides the Minister with discretion to cancel or waive penalties under the Fairness Provisions. In order for the Fairness Provisions to be considered, the taxpayer must provide information explaining the extraordinary circumstances beyond their control that prevented the taxpayer or their representative from complying with the *Income Tax Act*. Each request for the cancellation or waiving of penalties is considered on its own merit.

b) Part X.1 Waiver Request Guidelines

The Minister may waive a taxpayer's Part X.1 tax payable if the taxpayer can satisfactorily establish that the excess contributions on which the tax is based arose as the result of reasonable error, and reasonable steps are taken to eliminate the excess.

Both the request to waive Part X.1 tax and supporting documentation must be in writing and provided along with the T1-OVP return. Payment should also be included.

The term "reasonable error" is not defined by law; however, the following provides general guidelines currently used by CRA to evaluate requests for waiving Part X.1. The guidelines are subject to change as they will be reviewed on an-on-going basis and refined or revised based on documentary evidence.

What is reasonable error?
Reasonable error means first and foremost that the excess arose because of a mistake and that the taxpayer did not intentionally over-contribute. For the mistake to be reasonable it has to be one that an impartial person would consider more likely to occur rather than less likely to occur based on extraordinary circumstances. An impartial person is someone who is not biased about how an issue or situation arose and how it is resolved. Extraordinary circumstances that a taxpayer had not previously encountered or that were beyond the taxpayer's control and that led to the excess would, in most cases, indicate that the excess arose due to a reasonable error.

Note: Reasonable error does not include getting poor advice from the financial institution or misreading notices the Canada Revenue Agency (CRA) sends.

Ignorance of the law
We do not accept lack of awareness of the law as a basis for granting a waiver. If the excess arose through neglect, carelessness, or lack of awareness on the part of the taxpayer, normally CRA does not waive the tax. For example, the fact that a taxpayer was not aware of the tax on RRSP excess contributions does not constitute by itself an acceptable reason to waive the tax.

Accountants or Tax Preparers
Taxpayers are responsible for meeting their obligations under the legislation the Agency administers. As a result, taxpayers are responsible for errors made by accountants or tax preparers. CRA reviews these waiver requests making sure not to undermine the principles of self-assessment.

Third Parties (Financial institutions, Employers, Financial advisors)
If the excess occurred due to a third party error and there is documentary evidence of an error or incorrect information provided by a third party and it cannot be corrected by granting administrative relief, CRA may consider this to be reasonable error.

If the RRSP contribution receipt was prepared incorrectly or funds were deposited in a registered plan in error, CRA will advise the taxpayer that the tax cannot be waived; however, their request will be referred to their Tax Service Office for consideration of administrative relief.

Earning and Losses within an RRSP
If a taxpayer states that their RRSP investment has lost money and requests a waiver of tax on that basis, CRA will deny the request as the Part X.1 tax is levied on the excess contribution and not on the amount earned or lost while the excess contribution is in the plan.

c) Late filed T5018 information returns are subject to a penalty under subsection 162(7) of the Income Tax Act. Relief from this penalty is available under the Voluntary Disclosure Program (VDP) if the request meets VDP conditions. That is, the disclosure must:

- be voluntary,
- be complete,
- involve a penalty, and
- include information that is:
  - at least one year past due, or
  - if less than one year past due, not initiated simply to avoid late filing or installment penalties.

The VDP is not intended to act as a vehicle for clients to intentionally avoid their legal obligations under the acts administered by the CRA. For example, a client cannot use the VDP to disclose a current-year income tax return simply to avoid paying the late-filing penalty. A current, but late, T5018 would likely fall into this category. However, if a taxpayer has not filed T5018 returns for a number of years and includes a current, but late, return with previously unfiled returns for other years, all of the returns, including the current return, will be included in the VDP review.

Q30. Apprenticeship Job Creation Tax Credit
Could you confirm that the Apprenticeship Job Creation Tax Credit is available to qualifying employment after May 1, 2006, even though the person may have been hired before that date?

Response:
Yes, the tax credit is available to employers for employees hired prior to May 1, 2006 on salaries earned after May 1, 2006 as indicated in the *2006 Corporate Income Tax Guide* T4012.

Excerpt:
Apprenticeship job creation tax credit
This is a new credit introduced to encourage employers to hire new apprentices in eligible trades. This measure will provide eligible employers with a non-refundable tax credit equal to 10% of the salaries and wages paid to qualifying apprentices after May 1, 2006, to a maximum credit of $2,000 per year, per apprentice. Where two or more related employers employ an apprentice, only one employer will be able to claim the $2,000 limit. The amount of the credit will be added to the corporation's investment tax credit pool and be available to reduce taxes payable for the tax year. An unused amount may be carried back 3 years and forward 20 years.

It should be noted that an unused credit may only be carried back 3 years to tax years ending after May 1, 2006.

Q31. Business Investment Loss
There are a number of requirements that must be met for a taxpayer to claim a business investment loss on shares or debts that are not yet sold, one of which is the requirement to elect under Subsection 50(1). Do you have any guidelines with respect to the format of this election? For example, if a return has been e-filed, does this constitute an election or are additional steps required?

Response:
The CRA's policy with respect to the filing of elections was announced at the 1983 Canadian Tax Foundation Conference:

Several provisions in the Act provide for elections to be made by a taxpayer in the return of income without any prescribed form or manner for making the election. In these cases, it is the Department's general position that the election should take the form of a letter attached to the return for the year in which the election is made. In the absence of such a letter or some positive evidence in the return that the election is being made, each case will have to be decided on its own merits. The Department will accept that a valid election has been made when the taxpayer's actions clearly indicate the intention to have the elective provision apply. The taxpayer will be expected to confirm his intention in writing when requested to do so.

For returns that are electronically filed, all elections and supporting documentation must be submitted in writing. In order for an election to be considered valid, it must be submitted by the due date established in the Income Tax Act.

When documents are submitted, the taxpayer's full name, address, and social insurance number should be clearly identified on all election forms and letters. The covering letter should also indicate that the documents are submitted in support of the taxpayer's electronically filed return and state the intention to apply subsection 50(1) of the *Income Tax Act*.

Generally, the following information should be included in the letter:

1. Where the business investment loss is in respect of shares of a small business corporation, information such as the name of the small business corporation, the number and class of the particular share(s) and the adjusted cost base of the share(s) should be provided.

2. Where the business investment loss is in respect of a debt owing to the taxpayer, information such as the name of the small business corporation and the amount and a brief description of the debt owing to which the taxpayer is electing under subsection 50(1) should be provided.

3. Where applicable, the date the corporation became bankrupt or the date of the winding-up order should also be provided.

This list is intended to provide some general guidelines. The CRA may request other information as required.

Q32. Personal Installments
We understand that many taxpayers did not receive the CRA reminder about quarterly personal income tax installments in 2006. If a person did not make quarterly installments in 2006 because they did not receive the CRA letter, is there any possibility of a waiver or reduction of the interest?

Response: (provided by WTC)
The CRA is not aware of any mass situation in which installment reminders were not received by individuals in February or August 2006 (or for any other installment issuance). We investigate any case of missing mail that is brought to our attention and ensure the installment reminder was mailed to the address on file. We also ensure a correct address is on the taxpayer account when concerns such as these are brought to our attention.

Instalment interest or penalties are not charged when an instalment reminder has not been sent.

Individuals required to make installment payments are aware of their obligations and should make installment payments independent of the installment "reminder." They are told on the Notice of Assessment that they may be required to make installment payments before any payments need be made.

Having said that, individual circumstances presented are always considered when relief is requested under subsection 220(3.1) of the *Income Tax Act*. In cases, for example, where an individual provided CRA a new address in a timely manner and no update of that address caused mail to be misdirected, relief might be granted.

Q33. Eligible Dividends

Subsection 89(1) of the *Income Tax Act* (Canada) (the "ITA") defines eligible dividend as "a taxable dividend that is received by a person resident in Canada, paid after 2005 by a corporation resident in Canada and designated, as provided under subsection 89(14) of the ITA."

Subsection 89(1) of the ITA provides that "a corporation designates a dividend it pays at any time to be an eligible dividend by notifying in writing at that time each person or partnership to whom it pays all or any part of the dividend that the dividend is an eligible dividend."

On December 20, 2006, the Canada Revenue Agency (the "CRA") issued a News Release providing administrative guidelines for corporations to follow when making eligible dividend designations. Unfortunately, subsection 89(1) is worded quite specifically, as discussed below, and the News Release does not address certain potential problem areas. The administrative relief provided to public corporations is much broader than private corporations. If the CRA assesses corporations strictly in accordance with the wording contained in subsection 89(1), many dividends that are designated as eligible dividends may fail to qualify.

a) Subsection 89(1) is quite clear that a dividend must be designated as an eligible dividend by notifying the shareholder in writing at the time it is paid. Strictly interpreted, this means at the same time and not a moment before or after. For example, a corporation that provides written notification to its shareholders by way of e-mail, and mails the dividend cheques later the same day, may have failed to meet the statutory requirements to be an eligible dividend because the two events did not occur at precisely the same time.

   From a legal perspective, there can be difficulties in determining the exact time that a dividend is paid (e.g. is it paid when evidence of indebtedness is granted—ie., credit to a shareholder loan account—or, if a cheque is issued when the cheque is mailed, received by the shareholder, presented for payment at a financial institution or when the cheque clears the corporate bank account?). Moreover, the wording in subsection 89(1) makes it practically impossible for a corporation to prove when the notice requirement has been met, short of producing an affidavit of service from an officer of the corporation who personally delivered the written notice identifying the dividend as an eligible dividend.

   What reasonable administrative guidelines will the CRA adopt in these circumstances?

b) Subsection 117(1) of the (Alberta) (the "ABCA") provides that a resolution in writing, signed by all the directors entitled to vote on that resolution at a meeting of directors or committee of directors, is as valid as if it had been passed at a meeting of directors or committee of directors.

   The December 20, 2006, News Release states that the requirements of subsection 89(14) of the ITA are met "where all shareholders are directors of a corporation, a notation in the Minutes."

   In practice, resolutions are often prepared after their effective date. Will the CRA accept that the requirements of subsection 89(14) have been met where a directors' resolution meeting the requirements of subsection 117(1) of the ABCA is prepared after the effective date the dividend has been paid?

c) Most commercial agreements contain provisions defining the procedure to determine when notice will be considered to have been given, often varying with the form of written notice given. Subsection 89(14) of the ITA is silent on what constitutes written notice and when it is considered to be given.

   When will written notice be considered to have been given where different forms of communication are used (i.e. fax, e-mail, mail, registered mail, telex)? Will it be at the time it is sent and, if so, to what address (e.g. the last known address of the shareholder)?

d) Corporations will not be able to determine the balance in its "general rate income pool" (GRIP) with certainty until sometime after its taxation year.

   Assume a directors' resolution is prepared on December 31 of a particular taxation year. The resolution acknowledges that a dividend is declared and paid by way of a credit to each of the shareholders' loan accounts effective at 2:00 p.m. that day. The resolution states that the amount of dividend declared and paid is equal to the balance in the GRIP at the close of business on December 31, the corporation's taxation year. Finally,

the resolution states that the balance in the GRIP cannot be determined until the corporation's tax advisors have finalized the financial records of the corporation for that taxation year. Assume that each shareholder was presented with written notice at 2:00 p.m. that the dividend paid was an eligible dividend.

Will the CRA consider a dividend paid in the manner described above to be an eligible dividend pursuant to subsection 89(1) of the ITA, even though the exact amount of the dividend will not be determined until after the taxation year it is paid? This practice is similar to the manner that bonuses are declared as payable to shareholder/managers.

e) Public corporations are able to make "global designations" to the effect that all dividends paid are eligible dividends unless otherwise indicated. Similar administrative relief could be of significant benefit to widely held private corporations. Will the CRA consider adopting similar administrative relief for private corporations (for example, those with employee share ownership plans)?

Response:
As this is in respective of recent legislation, we are not able to provide a response at this time. We will take the question under advisement.

Q34. Electronic Filing
Are there any discussions regarding the ability to electronically file election forms such as the T2057, T2022 etc?

Response:
The long-term goal is to give taxpayers the ability to file all the CRA's elections electronically. However, at this time signatures are required and we do not expect that these forms will be available for electronic filing in the near future. In the meantime, the T2057 is available in PDF fillable format.

With respect to upcoming filing improvements, in October of 2007, the GST/HST Netfile & GST/HST Telefile will be expanded to accept debit returns (in addition to nil returns and returns with refunds up to $10,000).

My Business Account (MyBA) will expand to allow authorized third party access to business tax account information (Represent a Client for business accounts).

Authorized third parties could be given the electronic filing/viewing options through MyBA that business owners currently have:

- Transmit many types of information returns
- Transmit corporation income tax returns
- View status of payroll and corporation income tax returns
- View account balances for corporation income tax, Other Levies, and Payroll accounts.

Also, MyBA will add account information and transaction details on corporation income tax, GST/HST, and Softwood Lumber accounts for business owners and authorized third parties. My Business Account will continue to expand approximately every six months, so we invite you to keep checking for the latest information.

Q35. International Tax Services Office—Return Processing
The time taken by International Tax Services Office to process a return, particularly for a taxpayer new to Canada, was long in the past but appears to have lengthened substantially over the past year. Please comment as to the reasons and any plans to reduce the processing time.

Response:
In general terms, for the fiscal period ended March 31, 06, ITSO received 411,000 returns and they processed 98% of the "On Time Returns" that were received by mid June—this met national standards.

"On Time Returns" are those returns received by April 30th for which there is the mid June processing target; except in the case of those filed by June 30th for pension and rental income which have a mid-August target. Therefore all returns received on time will be processed within four to six weeks unless further information is needed.

Many of the returns filed require contact with the taxpayers by telephone call or by letter OR a referral to a Tax Service Office (especially for disposition of property). On referrals, the taxpayer is advised of the referral through a letter and upon receipt of the reply from the taxpayer or the TSO the return is processed.

ITSO has no control over the length of time required by the TSOs for verification of files (audit or dispositions). Where delays are experienced beyond the six-week period, the taxpayer should contact ITSO or the local TSO to which the file was referred to determine the status of the case.

For interest, some of the factors that commonly lead to either additional contact or a referral to a TSO are:

- Certificate of Compliance (T2068 or T2064) not enclosed in the tax return
- T4A-NR not attached to support the tax withheld under Regulation 105
- Schedule 91 and 97 not enclosed or incomplete regarding the work performed in Canada by or on behalf of the non-resident
- BN, ITN/SIN not obtained when activity occurred, rather at the filing of the tax return
- T4s not issued to employees working in Canada along with required withholding tax at the graduated rates or an approved Regulation 102 Waiver in place
- Secondary withholding and reporting under Regulation 105 for work performed in Canada by a non-resident while carrying out a contract
- Withholding under Part XIII not done such as when there is equipment rental from outside the country for use in Canada

GST Questions

Q1. Voluntary Disclosure and Standardized Accounting Rules
Please advise as to how the new standardized accounting rules will impact the CRA administration of the voluntary disclosure program. In particular will the four percent WASH penalty be waived under this new program?

Response:
IC 00-1R states in part:
"Clients who make a valid voluntary disclosure will have to pay the taxes and duties owing, plus interest. In this situation, the CRA can provide relief from penalties and prosecution that would otherwise be imposed under the acts…"

The VDP focus is on penalties. If no penalty exists, then the issue is not a valid VDP request and we will not grant any relief with respect to an invalid VDP request.

For a valid VDP request we will apply the WASH transaction policy when applicable. However, in periods ending on or after April 1, 2007, the remaining four percent interest after application of the WASH transaction policy will not be waived under the VDP.

Q2. Voluntary Disclosure Penalty
The GST voluntary disclosures program currently requires a penalty to apply to a taxable transaction/supply or series of supplies before a disclosure can be considered, among other things. For errors and issues identified by taxpayers for reporting periods after March 31, 2007, a penalty would not generally apply due to the non-application of subsection 280(1) (as it once read) for periods after March 31, 2007.

Does the Agency anticipate that the GST voluntary disclosures program will be of limited benefit for taxpayers who find themselves in the above situation? Has or will the Agency consider(ed) addressing this issue with Finance in order to allow taxpayers to come forth and continue to correct deficiencies in their GST affairs in this situation, barring gross negligence issues? We feel that it would be prudent for the Agency to attempt to address this issue on either an administrative basis or possibly a legislative basis in order to extend the usefulness of the program going forward for periods containing GST errors or omissions in reporting periods beginning after March 31, 2007.

Response:
From an Agency-wide perspective, we are considering the implications of the GST/HST legislative changes, which were effective April 1, 2007. Once this review is complete we will issue further information on this matter.

IC 00-1R states in part:
"Clients who make a valid voluntary disclosure will have to pay the taxes and duties owing, plus interest. In this situation, the CCRA can provide relief from penalties and prosecution that would otherwise be imposed under the acts…"

In a WASH transaction situation where there is no penalty applicable the request will not meet one of the basic validity conditions of the VDP. A penalty must be applicable for the request to meet the validity condition. As no penalty is applicable, the VDP will not review the request or grant any relief. If a gross negligence penalty could be applied in the situation, the request will be deemed to meet the penalty condition and the VDP will protect the registrant from the penalty application and they will apply the WASH transaction policy. However, as the WASH transaction policy leaves a residual four percent interest and interest is generally not waived under the VDP, the four percent will not be waived or cancelled. The economic incentive under the VDP will always be the waiver or cancellation of penalty and the protection from possible prosecution.

Q3. Voluntary Disclosure Completeness
Some of our colleagues in Ontario have been told that a disclosure is not considered to be complete unless "all" past errors have been reported. Specifically, they have been asked to go back to January 1, 1991 and disclose any error or omission. Not complying with this will mean the disclosure is not "complete" and will not qualify for any special treatment under the VDP.

Where a registrant is fairly new and all documentation is easily available, going back to the first day that operations began may not be a concern. However, where a business has been operating for some time and has maintained its records in accordance with subsection 286(3) (that is, six years from the end of the year to which the records relate), it may not be able to provide a "full and complete" disclosure for transactions that took place up to 16 years earlier. It is not reasonable for a person to be shut out of the voluntary disclosure program simply because the person has followed the legislation and has destroyed certain business records.

As an example, assume a person did not collect GST on sales of certain items since January 1, 1991 (let us also assume that the items were sold to other registrants, and would normally qualify as "WASH transactions"). Some time in 2007, it realizes this and attempts to voluntarily disclose this error to CRA. However, its books and records for years from 1991 to 1999 may already have been destroyed. The person wants to comply with the legislation and remit the tax it failed to collect for 2000 through 2006, but it cannot determine its liability for the other years.

Could you please confirm or deny that the VDP now has the requirement that the person making the disclosure must go back to the day the GST first became effective or the day the business first began operating?

Response:
A supplier has the obligation to collect taxes on taxable supplies, whether the situation is a "WASH transaction" or not.

Taxpayers making a voluntary disclosure are expected (now and previously) to provide full facts and documentation for all tax years/reporting periods where there is previously unreported or inaccurate information.

Reasonable efforts are expected from the taxpayer to present a complete and accurate representation of the unreported amounts for all affected years (including old years). Only then is the VDP officer in a position to evaluate the significance of the amounts in each year in relation to the entire disclosure.

Q4. GST 44 Elections
Has the Canada Revenue Agency made changes to its administrative policy to accept late-filed GST 44 elections? As is common in the oil and gas industry, sales of oil and gas properties have continued at a rapid pace to which section 167 elections are relied on. Can we expect greater than normal scrutiny from audit in regards to sales of oil and gas properties and, if so, why? Audit has more recently commented that even when a GST 44 has been filed, they may not be willing to accept the election—should this be construed as a basis for industry to file voluntary disclosures for all late-filed GST 44s?

Response:
Section 167 effectively provides that when a person sells a business or part of a business and certain conditions are met, the seller and purchaser may jointly elect to have no GST/HST apply on the sale of the business.

In order to apply this election in respect of a particular transaction, there are several criteria that must be met:

- The supplier must make a supply of a business or part of a business that was established or carried on by the supplier or by another person and acquired by the supplier.
- Under the agreement for the supply of the business, the recipient must be acquiring ownership, possession or use of all or substantially all of the property that can reasonably be regarded as being necessary for the recipient to be capable of carrying on the business or part as business; and,
- The supplier and the registrant must have the required registration status, meaning if the supplier is a registrant and the recipient is not a registrant they cannot make the election.

The supply of particular assets of a business is not considered to be the supply of a business. However, the nature of a particular business generally determines the particular properties that comprise a business or part of a business for the purposes of the section 167 (GST 44) election.

If neither the supplier nor the recipient is a registrant, the election form must be completed and kept in the books and records of both parties to the election. Otherwise, if the parties are eligible to make the election, the form must be filed with the CRA. The due date for filing the election with CRA is the due date of the return in which the tax would otherwise have been payable on the supply of the assets.

However, subsection 167(1.1) also states that the election may be filed "… on such later day as the Minister may determine on application of the recipient…."

Situations where a recipient applies to the Minister are examined on a case by case basis.

If the requirements for the election were not met at the time of the transaction, an assessment could be made.

Q5. Insurance Premiums Excise Tax
The issue of Excise Tax related to Insurance Premiums is beginning to affect taxpayers as CRA advises taxpayers of their filing requirements where insurance is purchased offshore. Does CRA have a formal compliance program in place in this area?

Response:
Voluntary compliance and self-assessment are the best, most efficient ways to administer Canada's tax system. The CRA promotes voluntary compliance, which is an effective approach for most Canadians. This is done through education, taxpayer services and assistance. However, a program of activities to identify, correct, and deter non-compliance is also essential. Activities include examinations, audits, and investigations, which are intended to ensure compliance with the *Income Tax Act* and *Excise Tax Act*.

Additional Information on Objection and Appeals Process for Part I Tax Assessments

Preliminary enquiries
Persons who disagree with a Notice of Assessment are encouraged to contact the Appeals Division of their local Tax Services Office to discuss any issues surrounding the assessment in an effort to resolve those issues, and thereby avoid having to initiate the formal objection process.

In the case of the 10% tax imposed under Part I of the *Excise Tax Act*, which falls under the non-GST portion of the *Excise Tax Act,* a person may not initially disagree with the Notice of Assessment issued immediately after the B243, Excise Tax Return – Insured is processed, but the disagreement may occur after the request for the exemption from the tax is disallowed. At this point, the person may want to file a Notice of Objection.

The formal objection process commences with the filing of a Notice of Objection to an assessment or a reassessment, which results in an impartial review by the Appeals Division and can lead to appeals in the Federal Court and the Supreme Court of Canada.

Assessments
The Minister has the authority to assess or reassess the tax payable, penalty or interest, or other sum payable under the Act. In general, assessments must be made within a four-year limitation period.

Up to present, when a person files the B243, Excise Tax Return – Insured, and does not immediately submit payment, the CRA will issue a Notice of Assessment. If the person has submitted a request for an exemption, the request for the exemption from the Part I tax will be processed independently. Later, a letter is sent to the person stating whether or not any or part of the request for the exemption has been granted.

The decision provided in this letter with respect to the exemption request does not specifically yield any objection/appeal rights; therefore a notice of objection cannot be accepted in relation to the decision rendered in the letter. However, within 30 days the person may bring an application to Federal Court for Judicial Review of the decision. Alternatively, the person may file a Notice of Objection in relation to the Notice of Assessment since it reflects the tax payable on the net premiums. Consequently, a Notice of Objection may be filed within the relevant time limitations with respect to an assessment after the Commissioner gives an opinion on whether or not a premium is exempt.

Filing a Notice of Objection
Persons who disagree with a Notice of Assessment may file a Notice of Objection with the Minister of National Revenue within 90 days after the date the Notice of Assessment was sent, using form E413, Notice of Objection. A completed copy of the Notice of Objection must be filed with the Appeals Division of the nearest CRA Tax Services Office.

The Notice of Objection must set out the reasons for the objection and provide all the relevant facts in detail. In addition, letters, invoices or any other documents supporting the objection should be submitted. It is also helpful if a copy of the disputed Notice of Assessment accompanies the Notice of Objection.

Processing the Notice of Objection
Notices of Objection are date-stamped as they arrive at the CRA Tax Services Office. However, notices sent by first class mail or its equivalent are deemed to have been received on the date they were mailed.

After receiving the Notice of Objection, the Appeals Division sends either a letter of acknowledgement or a letter informing the person that the objection is invalid (e.g., the objection was not filed within 90 days, in which case instructions for applying for an extension of time will be enclosed).

The appeals officer reviews the Notice of Objection and contacts the person or the person's representative to discuss the matter. When requested to do so, persons should provide additional documentation promptly to allow for the quick resolution of the objection.

To ensure that the reasons behind the assessment are understood and to provide an open exchange of information, documents pertaining to the issues in dispute are offered to the person at the outset of the objection stage. In addition, the person is informed of any discussions held between the appeals officer and the assessing area about the disputed assessment.

After considering all the facts and reasons, a decision respecting the assessment is made by the Appeals Division with one of the following results:

a) The objection is allowed in full. This means that the amount in dispute in the assessment is reversed. This may occur, for example, where the person submits additional information that the CRA did not have when the original assessment was made.

b) The objection is allowed in part. This means the disputed dollar amount of the assessment is adjusted, and a Notice of Reassessment is issued. This occurs, for example, where the Appeals Division determines that the person is correct on some, but not all, issues raised in the objection.

c) The objection is not allowed. This means that the assessment under objection is upheld. Confirmation occurs when a person cannot demonstrate that the original assessment was incorrect.

Issuing a Notice of Decision
Extension of time limit to object:

Federal Court
A person who has filed a Notice of Objection may appeal to the Federal Court to have the assessment vacated or a reassessment made if:

- The person does not agree with the decision issued by the Appeals Division, in which case the appeal must be filed within 90 days from the date the Notice of Decision was sent; or
- The CRA has not issued a Notice of Decision regarding the objection within 180 days from the day the person filed the Notice of Objection.

A person may request consent from the CRA to appeal directly to the Federal Court and waive the right to a reconsideration of the assessment (i.e., the objection process). A request for direct appeal to the Federal Court may be made in the Notice of Objection or in a separate document filed at the same time.

After considering the request, the CRA may consent to the direct appeal and confirm the assessment without reconsideration. The person then files a Notice of Appeal with the Federal Court. However, if the CRA does not consent, the objection is processed in the normal manner.

Federal Court of Appeal
Judgments of the Federal Court may be appealed to the Federal Court of Appeal within 30 days of the date of the Federal Court's pronouncement of judgment. It should be noted that the months of July and August are excluded from this 30-day calculation.

Supreme Court of Canada
Judgments of the Federal Court may be appealed to the Supreme Court of Canada by requesting leave to appeal. The Supreme Court may grant leave to appeal if it is of the view that it should hear the case because of its national significance or the importance of the legal issues. Applications for leave to appeal must be filed within 60 days after the date of the judgment of the Federal Court of Appeal.

Q6. GST Remission Orders
What are the procedures for applying for a GST Remission Order? Does the local or national CRA office have to support the application for it to go forward?

Response:
A remission order is an extraordinary measure to provide complete or partial relief from federal taxes when such relief is not otherwise available under the existing tax laws. The Governor General in Council may grant a remission of tax, penalties, and interest under authority of the *Financial Administration Act* on the recommendation of the appropriate Minister.

A request for remission should be made in writing by the client, or the client's authorized representative, to the Tax Services Office serving the area in which the client resides. If an authorized representative submits the request, a third party authorization form must be included.

The request should clearly explain the circumstances of the case and the reasons why remission should be recommended. A copy of all relevant documents should be attached to the request. The Tax Services Office is responsible for conducting an initial review of the case and preparing a recommendation for CRA Headquarters. If the request is submitted directly to CRA Headquarters, the Tax Services Office will be asked for input. This may involve a thorough examination of the request, including a review of the history of the case, the sequence of events, and determination of any errors or discrepancies. If additional information is required, or it is unclear under which guideline the client may qualify for relief, contact will be established with the client. The guidelines considered are as follows:

- extreme financial hardship (normally used for income tax cases)
- incorrect action or advice on the part of CRA officials
- financial setback coupled with extenuating circumstances (ie., circumstances beyond a person's control)
- unintended results of the legislation.

CRA Headquarters officials then review the case particulars against the remission criteria, including a review of audit and/or Objection files, correspondence, Collections diaries, reports, and court documents, if applicable. CRA Headquarters officials will also consult with the Department of Finance or other interested parties, as warranted. The case is then presented to the Headquarters Remission Committee, which comprises senior CRA officials, for consideration. Tax Services Office recommendations provide an important component of the CRA Headquarters review and report to the Committee. However, the final responsibility for making remission recommendations rests with CRA Headquarters and the Headquarters Remission Committee.

In the event of a negative recommendation, the Assistant Commissioner, Legislative Policy and Regulatory Affairs Branch, will convey that decision, in writing, to the person who has requested relief or that person's authorized representative.

In the event of a positive recommendation, CRA Headquarters officials will prepare a draft remission order and explanatory note for formal examination and approval by the Department of Justice. Once approved, the draft remission order is sent to the Assistant Commissioner, Commissioner, and Minister, for their subsequent approval. If approved at each of these levels, it is sent to the Privy Council Office to be placed on the agenda of a Treasury Board meeting. Remission orders approved at this meeting are published in Part II of the Canada Gazette. When remission is granted, the Assistant Commissioner sends an official copy of the Order to the person who has requested the remission, or their authorized representative, and informs them that the matter has been referred to the appropriate Tax Services Office (Audit Division) for payment.

Clients will not be advised of the specifics of a recommendation at any point in the review process as this can be varied and/or overturned at any subsequent senior management level, and a decision is not final until the Governor General in Council has actually issued a remission order or the client has received a formal letter denying relief. It should be noted that the review of remission cases is also a lengthy process, taking anywhere from six to twelve months, on average. In the case of positive recommendations, some of the further review and processing is outside of CRA control, resulting in a lengthier timeframe.

Q7. Vacation Properties

The CRA's GST/HST Info Sheet GI-025, *The GST/HST and the Purchase, Use and Sale of Vacation Properties by Individuals*, includes the following statement.

> *Generally, a purchaser who registers prior to purchasing a vacation property is required to pay the GST/HST payable on the purchase of the property directly to the Canada Revenue Agency (CRA) unless the purchaser is an individual who purchases a property that is newly constructed and the vendor is a resident of Canada. In this case, the GST/HST payable on the purchase must be paid to the vendor.*
>
> *This statement, which appears to be based on paragraph 221(2)(b) of the* Excise Tax Act*, implies that a newly constructed vacation property is considered to be a residential complex before it has been used, even if the intended use by the recipient is as a hotel, motel, etc. (e.g., available for rent 100% of the time in a rental pool). Is this correct? If so, why would the intended use by the recipient not be the determining factor?*

Response:

Your understanding is correct. A newly constructed vacation property is generally considered to be a residential complex at the time of its sale even if the purchaser intends to make the property available exclusively for use in a rental pool immediately after the sale takes place. In the case of the taxable supply of a residential complex to an individual,

the vendor will be required to collect the tax even if the individual is registered for GST/HST purposes.

The definition of "residential complex" in subsection 123(1) of the *Excise Tax Act* excludes the building, or that part of the building, that includes one or more residential units, where all three parts of the exclusionary provision following paragraph (e) of the definition of "residential complex" are met as follows:

1. the building, or that part of the building, that is a hotel, a motel, an inn, a boarding house, a lodging house or other similar premises, or the land and appurtenances attributable to the building or part,
2. where the building is not described in paragraph (c) and
3. all or substantially all of the leases, licences or similar arrangements, under which residential units in the building or part are supplied, provide, or are expected to provide, for periods of continuous possession or use of less than sixty days.

For purposes of the application of the exclusionary provision referred to above, the intentions of the purchaser are generally not taken into consideration in determining whether property held for the purpose of supply by the vendor is a residential complex.

In the case of a newly constructed vacation property, the exclusionary provision is applied prior to its sale as an unoccupied property. Therefore, the expected use by the purchaser is not relevant in determining if the vacation property is a residential complex at the time of its first sale.

Even if the purchaser who is an individual enters into the rental pool agreement on or before the purchase of the vacation property takes place, it is the Canada Revenue Agency's position that simply placing the vacation property in a rental pool is not sufficient for purposes of meeting the first part of the exclusionary provision (i.e., the "hotel test").

Further, even after the sale takes place to a purchaser who is an individual, a vacation property would generally not meet the "hotel test" (and therefore not be excluded from the definition of residential complex) where the owner expects that, over a reasonable time period (normally, a one-year interval) there will be a mix of personal use and little or no rental use. In this case, the days where the unit is vacant will not automatically be considered to be days for use in making short-term rentals.

As outlined in GST/HST Policy Statement P-099, one of the conditions for a property to be considered a "hotel…or similar premise" is that the property be available throughout the year for rental to the public. Whether such a property in a rental pool would meet this condition where the terms of the rental pool allow for the property to be generally available for the individual owner's personal use, at the discretion of the owner, would depend on the extent of the property's personal use relative to its rental use.

Q8. Election under Subsection 177(1.1)
Partnership A is in the business of exploring for, developing, producing and selling crude oil and natural gas. BCo, a partner in Partnership A, markets Partnership A's crude oil and natural gas as an agent for Partnership A. Can BCo and Partnership A enter into an election under subsection 177(1.1) of the *Excise Tax Act* such that BCo would account for and remit GST collectible in respect of Partnership A's supplies? Would the answer vary if one or more of the following factors were present?

- BCo's marketing activity is governed by a contract with Partnership A that is separate from the partnership agreement.
- BCo markets crude oil and natural gas that it has produced or acquired for its own account.
- BCo markets crude oil and natural gas as agent for unrelated third parties.

Response:
Subsection 177(1.1) provides for an election in cases where a registrant, in the course of a commercial activity of the registrant, acts as agent in making a supply (otherwise than by auction) on behalf of a principal who is required to collect tax in respect of the supply (otherwise than as a consequence of the application of paragraph 177(1)(d)). It allows the agent and the principal to elect jointly to have the agent account for the tax in its net tax calculation as if the tax were collectible by the agent, rather than the principal.

A partnership is a separate person under the *Excise Tax Act* (ETA). Subsection 272.1(1) indicates that for the purposes of Part IX of the ETA (including section 177), anything done by a person as a member of the partnership is deemed to have been done by the partnership in the course of the partnership's activities and not to have been done by the person.

Therefore, a partner acting as a member of a partnership cannot be making supplies as agent under section 177 of the ETA given that subsection 272.1(1) of the ETA specifically deems anything done by the partner as a member of the

partnership to be done by the partnership in the course of the partnership's activities.

If BCo's marketing activity is not carried out as a member of the partnership, an election under subsection 177(1.1) of the ETA may be possible if the conditions of that subsection are met. We would have to review specific facts including the partnership agreement and the separate marketing agreement to determine if a subsection 177(1.1) election could be made in a particular fact situation.

Q9. GST Registration
With the closure of the business windows, GST registration has become a very difficult process. We are unable to use the on-line registration as it appears once a new entity is incorporated the process is started by CRA to initiate an automatic Business Number. In many cases we are not able to wait to get a GST number until the notification letter is received in the mail as a transaction is closing. Please explain where the registration forms are to be faxed if it for a Canadian Resident entity and if it is a non-resident entity?

Response:
Registration forms for a Canadian resident entity should be sent to Regina and marked urgent. Have the client write "URGENT" on their request, along with an explanation of why they need it urgently (i.e. real estate transaction), and fax it to 306-757-1412. Clients must ensure they provide pertinent documents (RC1, Corporate Certificate, List of Directors and RC59) and ensure that they are properly filled out.

Urgent non-resident registration requests should be faxed into the designated non-resident office. The following link, http://www.cra-arc.gc.ca/contact/gsthstnonres-e.html, which is available on CRA's external site, provides the contact number for non-resident GST/HST enquiries. It is highly recommended that taxpayers contact the applicable office to ensure that a GST account is required and to ensure that security requirements (if applicable) are addressed. The applicable non-resident office will provide the taxpayer with the fax number for submitting their requests.

Q10. Fairness Requests
Please update us on the guidelines used to consider waiver of penalty and/or interest where returns were filed late under extraordinary circumstances. As well, please provide us with contact information for the person(s) who are responsible for administering the program?

Response:
Fairness and Taxpayer Rights information is available at the CRA Web-site through the "Quick links" section or by means of a search using the word "Fairness."

EXTRAORDINARY CIRCUMSTANCES ON GST & PAYROLL ACCOUNTS are addressed by Business Returns Division, WTC.

Lori Shaw, Team Leader
Business Returns
Winnipeg Taxation Centre
(204) 984 -3039

Please note that there is frequent movement of staff at the Taxation Centre and at present they are in the process of relocating the Taxpayer Relief group. The above phone number will not be accurate after the group is relocated.

All requests for relief should be in writing and provide as many details as possible to support the claim that the late filing of the return was unavoidable due to an "extraordinary" circumstance.

Decisions to grant or deny relief will be issued in writing after a careful review of the case. Forecasts of the decision in respect to a request will not be provided over the phone.

The Fairness Provisions have been renamed to the Taxpayer Relief Provisions to coincide with the release of the new information circular, IC 07-1, *Taxpayer Relief Provisions*. The new IC will be released in late April or early May 2007.

When the new Information Circular is released to the public it will also be made available on the CRA Web-site.

We have changed the name from Fairness Provisions to Taxpayer Relief Provisions to better reflect the distinct legislation that permits ministerial discretion within various CRA programs, and to lessen the confusion between fairness as allowed by legislation and fairness as a key corporate value that the Agency commits to when dealing with taxpayers. As in the past, the Taxpayer Relief Provisions will continue to be an important part of the Agency's commitment to fairly administer the tax system.

Q11. Amalgamation
Please explain the GST implications of two corporations amalgamating where one corporation was providing taxable services to the other corporation, has not invoiced for those services, but has claimed input tax credits for capital property and inventory. The second corporation is involved only in exempt activity.

Response:
Please note that legislative references in the following comments are to the *Excise Tax Act* (the Act).

To answer this question fully, we would need additional information including why the invoice has not been issued, are these corporations related, are either of the amalgamating corporations a financial institution and what is the nature of the amalgamation. In the absence of this information, we offer the following general comments.

Section 271 of the ETA provides the general rules relating to amalgamations in cases where the amalgamation is not a result of the acquisition of property of one corporation by another pursuant to the purchase of the property by the other corporation or as the result of the distribution of the property to the other corporation on the winding-up of the corporation. Under section 271, for the purposes of Part IX of the ETA, the new corporation formed by the amalgamation of A Co. and B Co. (AMALCO) is generally deemed to be a separate person from each of the predecessors. However, for specific purposes, and for prescribed purposes, AMALCO is deemed to be the same corporation as, and a continuation of, the predecessor corporations.

Some of the purposes for which they are deemed to be the same person as, and a continuation of, the predecessor corporations and that are related to this question are:

- "applying the provisions of this Part in respect of property or a service acquired, imported or brought into a participating province by a predecessor…"
- the requirement to calculate and remit net tax (sections 225 and 228) and Division VIII, which includes the various assessing provisions including section 296.

Some of the GST implications are that if B Co. was making taxable supplies and did not account for tax collectible under section 225, AMALCO could be assessed under section 296 for any GST owing. On the other hand, if B. Co. claimed ITCs for which it was not eligible because it was making free supplies in support of the exempt activities of A Co., or if there was a change in use of B Co.'s capital property, AMALCO could be assessed under section 296.

Q12. Technical Questions via Email
Some Tax Service Offices across the country have been accepting technical GST/HST questions via the Internet. This avoids the problems of telephone tag, of having a junior officer trying to answer a difficult question and, most importantly, eliminates the issue of a misunderstanding of the facts or of the answer. There is also a record of the question and the answer that can be stored in a databank and re-used by the CRA when similar questions are asked or can be reread by the caller at a future time to refresh their understanding.

The accuracy of responses should increase dramatically and the level of officer answering queries should be more consistent with the difficulty of the question, increasing efficiency. Verification of the accuracy of responses can be checked without having to record or listen in to verbal conversations.

When will the Alberta Technical Information Services offices have an e-mail address for this purpose?

Response:
The Internet is an open and public network. When it comes to doing business transactions or providing services involving confidential data, extra safeguards must be in place. We take steps to ensure the safety and integrity of transactions on our website. We ask that you do not transmit personal information to us using unsecured email because we cannot be sure of who is sending the message. We also won't send personal information through unsecured e-mail because we cannot ensure your confidentiality.

All written requests for rulings or interpretations forwarded to GST/HST Rulings, regardless of method of receipt, are responded to in writing via traditional mail delivery or facsimile transmission per the requirements outlined in GST/HST Memorandum 1.4. Technical questions submitted in written format to GST/HST Rulings may be responded to by telephone or will be treated similarly to written requests for rulings and interpretations if they are sufficiently complex or require certainty (i.e., a ruling).

Due to the present confidentiality and security issues surrounding e-mail communication, the Prairie GST/HST Rulings Centre and its individual offices have no immediate plans to create an e-mail address for the purpose of communicating with clients. We encourage our clients to continue to communicate with us using traditional means such as mail, fax transmission, or by telephone. Furthermore, a review of all GST/HST Rulings Centres will be undertaken to ensure that all centres are complying with CRA policies on e-mail transmissions.

Q13. Amounts paid to unions
Unions that collect union dues that are considered to be membership dues from their members' employers and where the amount is deducted from the employees' pay by

the employer are, and always have been, exempt from GST under section 189 of Part IX of the *Excise Tax Act*, specifically paragraph (b). Other fees such as education costs and other fees (administration fees, etc) are also remitted to many unions directly by the employer and are not deducted off the employees' pay.

In 1997 and 2000, the Rulings directorate published two separate rulings letters on this latter issue, indicating that the fees were exempt pursuant to paragraph 189(a) despite the fact that they were paid directly by the employer to union since the amounts were paid in order to "…partially defray the…cost of monitoring, enforcing, negotiating and administering the agreements.."

The RITS reference numbers are for the 1997 letter HQR0000640 (dated November 25, 1997) and for the 2000 letter 3038 (dated November 30, 2000).

We have been experiencing situations where taxpayers are being audited and assessed for this issue under the contention that this is a fee-for-service (ie., a supply is provided by the union to the employers) that is taxable. Has the Agency recently reversed its position on this long-standing exemption and the rulings letters quoted above? If so, the profession would be interested in the reason for the change in position as such letters have been instrumental in guiding taxpayers who have relied on these positions for some time.

Response:
The Canada Revenue Agency (the CRA) is unable to comment on the specifics of a ruling.

Only membership dues payable by members to certain trade unions or association of public servants meet the requirements of paragraph 189(a) of the *Excise Tax Act* (the ETA).

It is the CRA's position that an amount payable under a collective agreement to an organization by a member's employer does not fall within section 189 of the ETA and may be consideration for a supply made by that organization to the employer. This determination must be made on a case-by-case basis.

Q14. Section 280.1
Please explain the application of new Section 280.1 in the following circumstances:

a) where the return is filed late with a Net Tax owing, but a payment is made in full before the filing deadline

b) where the return is filed late with Net Tax owing and payment in full is made a few days late

c) where the return is filed late with a Net Tax refund and after audit adjustments, the Net Tax is a payable

d) where a return is filed late, the late penalty is assessed and paid and the Net Tax is amended or reassessed at a later date, increasing the Net Tax

e) where a return is filed late with a Net Tax refund and the registrant comes forward with a Voluntary Disclosure at a future time that causes the Net Tax to be a payable.

Response:
Essentially, the failure to file penalty under S.280.1 calculates a two element penalty—a base penalty (element "a") of one percent on the unremitted/unpaid balance of any return that is filed late, and an additional penalty (element "b") which calculates another charge of one-quarter of the base penalty multiplied by the number of complete months (to a maximum of 12 months) that the unremitted/unpaid amount is outstanding.

a) Although the return is late filed, the full payment was made before the filing deadline, therefore no failure to file penalty will be calculated on the return.

b) The penalty under S.280.1 will be calculated as one percent of the full unremitted/unpaid balance. As payment was made only a few days late, (ie., less than a complete month) no additional penalty under element "b" will arise.

c) As the return was initially filed as a credit return, the failure to file penalty under S.280.1 would not have been applicable. However, upon reassessment, the failure to file will apply and will be calculated pursuant to the formula in S.280.1 as (a) one percent of the amount of net tax owing and (b) one-quarter of the amount of element "a" for the number of entire months the amount of net tax owing was outstanding up to a maximum of twelve months.

d) As the return is filed late, S.280.1 penalty will be calculated pursuant to the formula as (a) one percent of the incremental amount of net tax and (b) one-quarter of the amount of element "a" for the number of entire months the incremental amount of net tax was outstanding up to a maximum of twelve months.

e) In the situation outlined above, the failure to file penalty will apply. This penalty is one percent of the net tax due plus one-quarter percent for each month outstanding (to a maximum of 12 months). As a penalty is applicable,

the disclosure could be considered under the Voluntary Disclosures Program.

Q15. Estimated returns
Will the CRA accept without penalty returns filed on time with estimated numbers and an amendment made when the exact GST and ITCs are known?

Response:
No. As per subsection 280(1) Interest:
Subject to this section and section 281, if a person fails to remit or pay an amount to the Receiver General when required under this Part, the person shall pay interest at the prescribed rate on the amount, computed for the period beginning on the first day following the day on or before which the amount was required to be remitted or paid and ending on the day the amount is remitted or paid.

If a return has been filed on time with estimated numbers and then an amendment made when the exact GST and ITCs are known, CRA's administrative policy regarding adjustments (P-149R) will determine the proper net tax and the penalty to be assessed.

Q16. Late New Housing Rebates
At one time, the federal government proposed to amend the provisions for GST/HST New Housing Rebates to allow the CRA some discretion on allowing rebate claims that were made beyond the statutory limits. While the amendment has not passed yet, has the CRA been applying the provision administratively and if so, how many extensions have been allowed and what typically would be the grounds for doing so?

Response:
The proposed amendment to subsection 256(3) (Bill C-40) permits the Minister of National Revenue to accept an application for the rebate for an owner-built home after the period otherwise allowed for making an application. Bill C-40 had its second reading January 30, 2007. The amendment recognizes that exceptional circumstances may prevent an owner-builder from filing the rebate application by the due date. Pending the legislation being passed, late filed returns accompanied by a letter from the claimant indicating the reasons for the delay are being held in abeyance. These rebate applicants will receive a letter and/or phone call confirming that their rebate and fairness request has been received and is being held until such time as the legislation is passed.

Any rebates that have been denied for being filed past the two-year deadline may write in with a letter explaining the exceptional circumstances. Since the effective date of the proposed legislation is not known at this time, those homeowners with a claim denied for late filing prior to December 20th of 2002 may also submit a letter outlining their exceptional circumstances requesting fairness. These rebate applicants will receive a letter and/or phone call confirming that their fairness request has been received and is being held until such time as the legislation is passed. The rebate and letter will be reviewed once the legislation has been passed.

CRA has not been applying the provision administratively; the rebates are being held in abeyance as described above.

Q17. GST Included Amounts
In light of the Ravelston decision, is the CRA revisiting the effects of section 182 on whether an agreed-upon-price is tax-inclusive as written in the legislation, or if it can be tax-exclusive where both parties failed to consider GST?

Where a court requires one party to pay additional amounts over and above the agreed-upon settlement, will the CRA reassess the party receiving the funds on the basis that the settlement amount has been altered?

Response:
The court effectively determined in Ravelston Corporation Limited, Re [2006] ETC 2913 that the settlement payment made by CanWest to the Receiver for Ravelston Corporation Ltd. be changed to reflect the GST that was applicable to the payment. In our view, whatever is the total settlement amount paid is the amount subject to section 182 of the ETA.

Whether a payment falls within section 182 of the ETA is a question of fact and can only be determined after reviewing the agreements and facts of the particular situation. However, where section 182 of the ETA does apply to a payment, the legislation is clear that the payment is deemed to include GST/HST and as such there is no flexibility to consider the payment to not include the GST/HST. With regards to the determination of the amount to be paid, the amount that is paid as a consequence of the breach, modification or termination of an agreement, and to which section 182 of the ETA applies, is a matter to be agreed upon between the parties involved.

Where section 182 of the ETA applies to an amount paid, the supplier is deemed to have collected GST/HST on a tax-inclusive basis, and is required to account for the GST/HST in the supplier's calculation and remittance of net tax under the requirements of sections 225 and 228 of the ETA. Pursuant

to section 296 of the ETA the Minister may assess, reassess or make an additional assessment of tax or net tax of the supplier under Division V for a reporting period of the supplier.

Q18. Clearance Certificates
Could the CRA please clarify its position regarding the issuance and timing of "Clearance Certificates" under section 270 of the *Excise Tax Act*? Historically, the local TSO has been reluctant to issue these and when they are actually requested it takes a significant amount of time to receive a certificate.

Response:
The following comments reflect the Edmonton TSOs practice regarding the issuance of "Clearance Certificates" for GST purposes. The standard for the issuance of a "Clearance Certificate" is within 90 days of the receipt of the request. Last year, the average time from receipt to issuance of the "Clearance Certificate" for GST was 69 days. Currently the Edmonton TSO has improved its clerical procedures for assigning the review of the requests, along with an increase in staff that are responsible for these 'Clearance Certificate" requests.

Q19. Liability of a Receiver
Could the CRA please clarify its position regarding the "liability of a receiver" with respect to section 266 of the *Excise Tax Act* when dealing with the reporting/filing of GST returns for the periods prior to the receiver being appointed? Is the policy of the CRA with respect to this liability going to force receivers to run a concurrent bankruptcy to protect them from liability?

Response:
One must make the distinction between the receiver's liability to pay amounts of GST outstanding and the requirement for him/her to file outstanding returns.

Pursuant to paragraphs 266(2)(g), (h) of the *Excise Tax Act*, it is the responsibility of the receiver to file the outstanding GST/HST returns (ie., returns due but not filed by the insolvent) for the periods prior to receivership, but only back to the return for the period ending immediately before the fiscal year of the insolvent that includes the day of appointment of the receiver. For example, if a receiver is appointed on February 15, 2007, and the insolvent is a quarterly filer with a December 31 fiscal year-end, the receiver is required to file outstanding returns, if any, starting with the return for the period ending on December 31, 2006. The receiver is not required to file outstanding returns for periods ending before December 31, 2006.

Paragraph 266(2)(d) restricts the receiver's liability for amounts of GST outstanding prior to the day the receiver is appointed to the extent of the property or money of the insolvent in the possession or under the control and management of the receiver, after satisfying the claims of the creditors that rank in priority to the Crown on the day of appointment of the receiver, and after paying the trustee in bankruptcy of the insolvent.

Q20. Public Service Bodies Rebate
Pursuant to section 259 of the *Excise Tax Act* ("ETA"), certain entities are entitled to claim the Public Service Bodies Rebate ("Rebate") in respect of GST paid on supplies and services. Under the current legislation, the Rebate is restricted to entities that fall within the definition of "selected public service body," "charity" or "qualifying non-profit organization." However, many other organizations exist that are dedicated to serving the needs of the public, but do not qualify for the Rebate, nor do they qualify to recover their GST paid by way of input tax credits. For example, a non-profit organization that provides educational services to the public, but is neither a registered charity, vocational school, school authority, university or a public college, is not entitled to recover its GST paid by way of a rebate nor by claiming input tax credits, as educational services are an exempt supply pursuant to Part III of Schedule V to the ETA.

From an administrative policy perspective, has the Canada Revenue Agency considered or discussed broadening the scope of entities it will permit to claim the Rebate, and in particular, a non-profit organization that does not fit squarely within the relevant legislative provisions, such as a non-profit organization that is not a selected public service body or a registered charity; or a non-profit organization that is not technically a "qualifying non-profit organization" because a sufficient portion of its funding is not received from the government?

Response:
The Canada Revenue Agency is responsible for administrating the *Excise Tax Act* (the ETA) as passed by Parliament, and only those entities listed in section 259 of the ETA qualify for the public service body (PSB) rebate. The Department of Finance is responsible for matters relating to tax policy and amendments to the ETA. Broadening the scope of entities that qualify for the PSB rebate is a matter of tax policy and would have to be considered by the Department of Finance.

Q21. Vocational Schools
Pursuant to section 8 of Part III of Schedule V to the

Excise Tax Act ("ETA"), a vocational school engaged in the provision of exempt educational services (pursuant to Part III of Schedule V to the ETA) is entitled to make an election ("Election") such that its otherwise exempt educational services are considered to be taxable, and thereby the vocational school is entitled to claim full input tax credits in respect of GST paid on supplies and services. We understand that in the past the Canada Revenue Agency has taken the position that a vocational school that is also a registered charity is not entitled to file the Election, and is thereby restricted to claiming the Public Service Bodies Rebate at the applicable specified percentage, on the basis that the provisions in the ETA in respect of charities generally take precedence over the provisions in respect of vocational schools, and therefore the Election is not available to registered charities.

Could the Canada Revenue Agency clarify its position in this regard and comment on whether any thought has been given to allowing such entities to file the Election in the future?

Response:
It is the Canada Revenue Agency's position that it is possible that a supply can be characterized under more than one provision in Schedule V to the Excise Tax Act (the ETA). Where an organization meets the ETA definition of both "vocational school" and "charity," all potential exempting provisions for supplies made by these organizations must be considered.

The purpose of the election in section 8 of Part III of Schedule V to the ETA is to give suppliers the option of not having the exemption under that section apply. However, this election does not render other applicable exemptions inoperative. That is, if other exemptions for a supply made by a vocational school or charity apply, then the supply will be exempt pursuant to those exemptions, notwithstanding that an election has been made pursuant to section 8.