TAX EXECUTIVES INSTITUTE, INC.'s

INCOME TAX QUESTIONS and

CANADA REVENUE AGENCY's RESPONSES

NOVEMBER 19, 2024 MEETING

Tax Executives Institute, Inc. ("TEI") welcomes the opportunity to present the following comments and questions on income tax issues, which will be discussed with representatives of the Canada Revenue Agency ("CRA") during the November 19, 2024, liaison meeting. If you have any questions about the agenda in advance of the meeting, please do not hesitate to contact Mark Caluori, TEI's Vice President for Canadian Affairs, at mcaluori@panamericansilver.com, or Sandy Shanks, Chair of TEI's Canadian Income Tax Committee, at Sandy.Shanks@ConocoPhillips.com.

A. Introduction

Question A.1. *Vision and Priorities for the CRA's International and Large Business Directorate*

We invite the Director General of the International and Large Business Directorate at the CRA to provide an update regarding the CRA's thoughts on the Agency's priorities for the next 12 months, the vision for the future of the branch, and feedback on the role TEI can play in achieving that vision.

CRA Response

2024 has been another busy year for the International and Large Business Directorate (ILBD).

ILBD's workload has expanded greatly in the last few years, and we continue to adapt to meet these new initiatives and emerging domestic and international priorities, while balancing our commitment to deliver on our core mandate.

Some examples of emerging and ongoing files are:

- implementing Excessive Interest and Financing Expense Limitation rules;
- eliminating the tax benefits of hybrid mismatch arrangements;
- implementing Canada's enhanced mandatory disclosure rules;
- strengthening the GAAR;
- improving Canada's transfer pricing rules;
- supporting the Organisation for Economic Co-operation and Development's Two Pillar Solution for international tax reform; and

- implementing the Digital Services Tax.

We remain committed to working in an open and transparent way. That means both working with our auditors in the regions, and with taxpayers and representatives such as TEI. On several occasions, we opened lines of communication that allowed both the CRA and the taxpayer community to voice concerns and find resolutions together. A few examples include:

- Consulting with stakeholders on the Draft Guidance on the Mandatory Disclosure Rules (MDR) as well as drafts of Form RC312 for Reportable Transactions and Notifiable Transactions and Form RC313 for Reportable Uncertain Tax Treatments;
- Notifying stakeholders about a public consultation by the OECD to gain feedback on the Draft User Guide for the GloBE Information Return XML Schema; and
- Recently sending out draft versions of a number of forms related to the excessive interest and financing expenses limitation (EIFEL) rules for review and feedback.

The CRA thanks TEI for their input and welcomes their continued collaboration in the upcoming year.

The ILBD's priorities for 2025 are grouped as the four Es:

1. *Continue to deliver on core mandate amidst workload* ***EXPANSION***

    a. The government has enacted a heavy legislative agenda, resulted in many new and significant measures to implement.
    b. In addition to new provisions added to the ITA, we also have two new acts, namely the GMTA and the DSTA.
    c. ILBD resources has not increased commensurately with the workload expansion.

2. *Ensure* **EFFICIENT & EFFECTIVE** *Administration*:

    ILBD is committed to running effective audit programs and also trying new compliance approaches. It continues to work on making audits more efficient, timely and current by:

    - Enhancing our risk assessment systems to improve our ability to focus valuable resources on the riskiest taxpayers and promote efficient audits. These automated risk assessment systems apply hundreds of risk algorithms on the CRA's databases to identify risk indicators and generate risk rankings of taxpayers at the economic and legal entity level.
    - Using technology to decrease time between receiving tax returns and completing the risk assessment process.
    - Updating information request timelines and educating auditors on the available information seeking tools and their appropriate use in order to obtain necessary information on a timely basis.

- Encouraging transparent and timely engagement between the CRA and taxpayers in order to do our part to minimize costly and time-consuming recourse and litigation at both the information gathering and reassessment stages.
- Leveraging technology during the field-to-HQ technical question referral process to encourage timeliness and consistency in positions.
- Conducting "real-time audits":
    - We are piloting this on a volunteer basis with a few organizations.
    - It might become more standard in the future.
    - The unique nature of this type of audit would be beneficial only in certain situations where a taxpayer wants earlier tax certainty and is fully transparent of uncertain tax positions contained in the taxpayer's tax accrual working papers.

- Conducting timely, restricted audits in the context of the MDR regime, meaning that transactions disclosed to the CRA will be risk assessed and selected for restricted audits on the issues disclosed.

With the growing volume of information received by the CRA, we also continue to enhance our systems and networks to ingest large data sets and run risk assessments more frequently to have more timely business intelligence.

AI is a rapidly evolving area and ILBD is looking to leverage AI and Gen AI to support compliance activities.

3. *Apply and expand technical* **EXPERTISE:**

As a result of our improved data and data analysis, the CRA is identifying more complex and egregious schemes and arrangements, often involving extensive networks. This means that increasingly, audits require extensive coordination across several areas within the CRA.

Because of this, several referral processes are in place to tap into technical expertise prior to reassessment. This ensures supportable technical positions, promotes audit quality, and improves sustainability of reassessments.

These referrals include:

- technical support provided by Regional & National Technical Advisors and Industry Specialists;
- the mandatory referral process to HQ on the application of the General Anti-Avoidance Rule and Transfer Pricing Penalties;
- the National Early Warning System to notify HQ of significant audit issues; and
- the guidance provided by the Audit File Resolution Committee.

In recent years, we have also strengthened technical support for high-risk cases bolstering legal resources to support audits and to defend against appeals to the courts by multinational enterprises and wealthy taxpayers.

These supports include:

- Counsel at Audit Stage, which:
  - provides legal advice to assist audit staff in effectively addressing tax compliance issues related particularly to aggressive tax planning;
  - enhances the national coordination of legal advice given by the Department of Justice and positions taken by audit staff on substantive and procedural matters; and
  - assists in the early identification of issues which may adversely impact the CRA policies or assessing positions and potential legislative deficiencies with a view to collaborating with the CRA on timely recommendations to the Department of Finance Canada.

- Pre-assessment Litigation (PAL) Services for High Risk and High Impact Cases which provides the services of a litigation team in high risk and high impact matters to:
  - support the audit;
  - assess litigation risks;
  - identify evidentiary issues; and
  - assist in the early resolution of the matters and/or ensure their effective transition into litigation.

B. Audit/Appeal Matters

Question B.1. *Discussion of CRA Approach to Issuance of Audit Queries and Proposal Letters*

At our 2023 liaison meeting, TEI began a productive discussion with CRA about the audit process. We would like to continue that conversation with CRA. As noted in 2023, TEI Members have observed that, over the past couple of years, the number and breadth of audit queries has significantly increased. This could be for a number of reasons:

- There is less interaction between taxpayers and audit teams (some taxpayers have noticed that interaction has been reduced due to fully remote audits). This provides less opportunity for answering questions in real-time, or for communicating relevant facts before erroneous or incomplete conclusions are reached.
- The number of audit teams that are involved with each taxpayer seems to also have increased. Domestic, transfer pricing, international, abusive tax avoidance teams all issue queries in relation to a specific year's audit, often asking for duplicative information. In fact, there is often a request to "include all information even if already submitted".

- At times, there seems to be a lack of technical expertise in the questions being asked by members of audit teams.

We are also experiencing a change in the content of Proposal Letters being issued, both in terms of their statement and reliance on factual information, and on their level of technical analysis. There seems to be an increased use of "cherry-picking" facts to support a pre-set conclusion, while ignoring the overall reasonableness of what the facts as a whole portray. In addition, the technical analysis included is often superficial, lacking in-depth research based on reliable resources.

Responding to multiple Audit Queries and Proposal Letters takes time and effort, and often requires the help of outside advisors if a tax department's resources are already constrained. This of course increases costs, which could become quite high if the responses required are lengthy.

Overall, we feel there are improvements that can be made when issuing Audit Queries and Proposal Letters, and we would be interested in hearing CRA's view on the issues raised above.

Specifically, we recommend the following to alleviate some of the unnecessary time and effort required to answer numerous CRA requests.

- Ensure that Audit Queries are relevant and not duplicative – this can be achieved by having up-front discussions with taxpayers, which should be in-person at least some of the time.
- Coordination of queries between audit teams, again to ensure that requests are not duplicative.
- Advance notification of any areas of focus or issues under investigation by CRA to avoid unnecessary surprises and ensure agreement on facts that CRA is using as the basis for their point of view.
- Discussion of preliminary technical basis for the CRA's interpretation of facts.
- Ensure that the timing of the issuance of a Proposal Letter is discussed with the taxpayer in advance – this is critical as such an issuance may have financial reporting consequences, and even if issued post quarter-end may need to be addressed in financial statements.

CRA Response

An integrated ILBD audit team is made up of an International and Large Business Case Manager (ILBCM) and auditors from the Domestic, International, and Tax Avoidance programs. The ILBCM oversees all stages of the audit , including the approval of any communication by the auditors with the taxpayer, such as issuing requests for information, queries, conducting site visits or presenting audit issues to the taxpayer.

As the CRA's primary point of contact, ILBCMs should engage with the taxpayer regularly during the audit, starting with discussing the audit plan and related timelines. Open

communication extends to all phases of the audit, whether it be requesting documentation, submitting an agreed upon set of facts for further review by regional or national technical support areas, or the communication of a well-developed reassessing position in a proposal letter.

The CRA commits to working with the TEI community to promote efficiency and encourage productive relationships throughout all stages of the audit process. We have also brought TEI's concerns to our regional management teams who are committed to promoting and facilitating the necessary communication between audit teams and taxpayers and their representatives.

Question B.2. *Currency of Audits*

The CRA has expressed its desire to make audits more current. This is an excellent goal that both taxpayers and the CRA should work towards. However, for some of our members, audits are snow progressing without audit plans and timelines being presented to taxpayers, new taxation years are being opened for audit with numerous unresolved issues for prior periods, and long periods go by with no questions from the field audit team followed by numerous questions with responses due in a limited timeframe. It seems that the desire to make audits more current is connected to audits progressing at the expense of not following protocols regarding planning and communication.

The CRA's Audit Manual states that a "well-prepared audit plan is essential for an effective and efficient audit", in particular a time budget is necessary for the taxpayer to ensure employees are available and a proper assessment of materiality is required to efficiently to complete an audit.

> **Question B.2.i.** Please comment on (a) the initiatives CRA implements to ensure audit plans and timelines are communicated to taxpayers in advance of the beginning of the audit, and (b) the consequences for the field team for not communicating the audit plan in a timely manner.
>
> **QuestionB.2.ii.** Please advise on any action taxpayers should take when (a) audit plans and timelines are not communicated prior to the commencement of the audit, and/or (b) actual timelines are materially divergent from the plan.

CRA Response

The CRA agrees that sharing an initial audit plan, including expected timelines, is an important and expected step in large file audits. It is a shared priority of the CRA and the large file taxpayer population to become more current in our audits. Our approach to achieving this goal will be carried out in a systematic manner, adjusting workplans to consider all relevant factors, eventually achieving the goal of auditing the most recently filed and assessed year in a more

timely manner; however there may be occasions, such as where an audit team is addressing a recurring issue, where it is efficient to address multiple years at one time.

It is reasonable to expect that taxpayers and audit teams will engage in ongoing updates related to the progress of the audit and communicate any delays anticipated along the way. Where challenged are encountered, either party may turn to the implicated Assistant Director of Audit of the Tax Services Office, who can facilitate the resolution of outstanding issues regarding the progress of the audit or provide insight into delays in completing the audit.

See Annex A: List of Tax Services Office Directors and Assistant Directors of Audit responsible for the International and Large Business program.

Question B.3. *Large Case File Manager Support*

At our 2023 liaison meeting, there was a discussion on how Large Case File Managers can support taxpayers with the administration of tax matters (such as installment transfers or residency certificates). The Large Case File Manager can also have a positive impact with the efficient coordination of tax audits, especially when there are several auditors involved (such as domestic, transfer pricing, international and / or abusive tax avoidance teams). As mentioned, it would be helpful if Large Case File Managers had broader responsibilities vis-à-vis a taxpayer's overall interactions and relationship with the CRA.

TEI invites CRA to provide an update on CRA's re-assessment of the role of the Large Case File Manager and when taxpayers could expect that such expanded role would be rolled out.

CRA Response

The CRA recognizes the importance of promoting and developing a professional auditor protocol. The CRA has a number of branches, each with their own specialized functions and procedures. It would be very difficult to equip and train an ILBCM to a level that would enable them to provide in-depth knowledge and detailed service on all aspects of CRA's diverse functions. The CRA continues to promote and initiate more collaborative relationships between the various branches with the goal to better serve taxpayers and reduce administrative burden.

The TEI may find the following additional resources helpful:

Assessment, Benefit and Service Branch, Business Returns Directorate,

- For matters relating to Business Number and Authorization, Corporation, Specialty and GST/HST Returns filing and processing, Business Accounting and payments, etc: Business Stakeholder Desk-BRD-ABSB / Bureau des intervenants d'entreprise-DDE-DGCPS (CRA/ARC) BUSDESKBRDG@cra-arc.gc.ca

Compliance Programs Branch, Scientific Research and Experimental Development

- For General inquiries Contact us - Scientific Research and Experimental Development (SR&ED) tax incentives - Canada.ca
- For Pre-claim consultation Pre-claim consultation - Scientific Research and Experimental Development (SR&ED) tax incentives - Canada.ca

Question B.4. *Provincial Income Allocation Audits*

The Canada Revenue Agency (CRA) administers tax programs on behalf of the provinces and territories. Where a taxpayer reports income in more than one jurisdiction, the Provincial Income Allocation ("PIA") Audit Program may select corporations for PIA audits. PIA audit questionnaires are detailed and time-consuming. Several Tax Executives Institute (TEI) member companies report PIA audits in years with immaterial taxable income, sometimes as low as $100. In addition, low PIA audit adjustment thresholds result in minor tax revenue increases to the provinces and territories. Further, TEI member companies report difficulties in paring down the PIA audit questionnaire or discussing the practicality of a PIA audit in certain taxation years with their Large File Case Manager. Based on our experience, the CRA inefficiently targets these audits.

Considering TEI member company experiences:

> **Question B.4.i.** What improvements can be made to the PIA audit screening and risk-assessment process to ensure PIA audits do not take place when there is an immaterial amount of taxable income?
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> CRA Response
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> The CRA has a responsibility to safeguard the interests of the Provinces and Territories for which it administers income tax, credit and benefit programs. The determination of whether taxable income has been properly allocated among the jurisdictions for which there exists a permanent establishment is an important consideration in income tax compliance activities.
>
> CRA reports to the Provinces and Territories the results of PIA audits on quarterly and annual bases. CRA also participates in a number of committees and working groups with the Provinces and Territories.
>
> There are several factors which are considered when determining whether a PIA audit may be mandatory or warranted. These factors are reviewed on a regular basis to ensure continued suitability in the context of PIA risk assessment and compliance programs. The PIA risk assessment process is consistent on a national scale to ensure that PIA audits are properly selected in accordance with the determination of risk. In respect of this, a PIA audit will likely be mandatory for a majority of taxpayers in the large business population.

Question B.4.ii. Would the CRA consider increasing the threshold for revenue or salaries and wages adjustments?

CRA Response

No, not at this time.

If a review of the threshold is undertaken, it will require the agreement of all Provinces and Territories including the two Non-Agreeing Provinces (NAP). The engagement with the NAP is required, as the CRA has a Memorandum of Understanding with the NAP in relation to PIA audit framework, adjustments and processes.

Question B.5. *TCAD Referral Process*

Sections 4.5.4 and 4.5.5 of the CRA Appeals Manual describe a procedural requirement for the local Appeals Division to send a risk referral to TCAD HQ if there is a proposal to vacate or vary 50% or more of the tax in dispute for objections involving more than $10 million received after April 1, 2016. In its 2016 Report, the Auditor General confirmed that CRA's objection process, prior to the introduction of the TCAD HQ referral process, was lengthy, often taking more than ten years to reach resolution. The introduction of the referral process to TCAD HQ adds an additional step in the CRA's objection process, which necessarily extends the amount of time required to resolve outstanding notice of objections. It has been the experience of our members that TCAD HQ referrals are lengthy, create a significant delay in the dispute resolution process and taxpayers are not provided with any meaningful feedback on the status of the referral process and/or the expected timelines for completion.

Can the CRA comment on the following:

Question B.5.i. What, if any, service standards exist that govern the amount of time that TCAD HQ is expected to respond when a risk referral is made to TCAD HQ?

CRA Response

In addition to the specific referral criterion cited in the question, there are several other established criteria that govern referrals of objections from the field operations to TCAD. Some of these are mandatory referrals and others are discretionary. All criteria are based on the need for the Appeals Branch to prudentially manage risk, and also given the fact that certain technical expertise is housed only in TCAD.

Very recently, a full review of all the criteria was completed to validate, update and streamline the referral process. While there are no prescribed service standards in terms

of turnaround times, TCAD endeavours to respond to each referral as quickly as it is able. As part of the review, certain dollar thresholds have been increased which should results in less overall referrals to TCAD.

Question B.5.ii. What is the number of referrals that have been made to TCAD HQ under this procedural requirement since implementation and the average time for TCAD HQ to complete this review of the referral measured from the date of the receipt of the referral by TCAD HQ to the date the referral is sent back to the local Appeals Officer?

CRA Response

For the specific criterion cited, there have been relatively few over the years. Overall, we can also report that TCAD is seeing a decreasing trend both with respect to the number and average age of the referrals inventory.

Question B.6. *Audit Referrals to HQ*

During the audit process, there are many instances where the local audit team may decide to refer a particular issue to HQ for assistance. In TEI's experience, the HQ referral process seems to be a "black box," in that once an issue is referred to HQ, the taxpayer is no longer directly involved in the process and the local audit team is not able to provide any feedback on status, timelines, or expected dates of resolution. Our experience is that HQ referrals often take well in excess of one year to complete, during which there is limited information shared with taxpayers. Can the CRA comment on what, if any, service standards exist that govern the amount of time that a referral to HQ is expected to be completed and returned to the local audit team? Also, can the CRA offer any feedback to TEI on how the HQ referral process could be improved?

CRA Response

Referrals, of varying complexity and impact, can be submitted to HQ by auditors working in the field for a variety of reasons covering such matters as GAAR , International Tax, Provincial Income Allocation, domestic Legislative Applications or Specific Industry etc.

As mentioned under Question A.1, these referrals include:

- technical support provided by Regional & National Technical Advisors and Industry Specialists;
- the mandatory referral process to HQ on the application of the General Anti-Avoidance Rule and Transfer Pricing Penalties;
- the National Early Warning System to notify HQ of significant audit issues; and
- consideration by the Audit File Resolution Committee.

There is no service standard for large files. The answer to a referral may be impacted by a number of internal and external factors, such as the availability of documentation, complexity of the issue, need to consult other areas, etc. Each referral requires careful consideration to ensure that all relevant information is assessed, all technical positions are reviewed, and appropriate action is taken. Both HQ and field staff are, however, encouraged to keep the lines of communication open to discuss status updates and potential issues which may ultimately delay the answer to the referral. Our goal is to ensure a balance between timely responses and the thoroughness required on the review of each referral.

Technology is being leveraged with respect to the various referral processes to encourage timeliness and consistency in CRA positions, as well as to bolster lines of communication between auditors and HQ as referrals are worked. We continually strive to improve our processes and reduce response times where possible.

Question B.7. *Compliance Order Penalty Proposal*

The 2024 Budget proposes to introduce new section 237.7 to impose a penalty equal to 10% of the aggregate tax payable by the taxpayer in respect of the taxation year or years to which the compliance order relates where the CRA obtains a compliance order against a taxpayer. This new penalty proposal does not distinguish between genuine non-compliance and bona fide objections to information requirements, and it raises serious concerns around arbitrary use, unfairness and constitutional validity.[1] This is especially the case given the proliferation in information requirements in recent years.

> **Question B.7.i.** Considering this and acknowledging that this proposal has not yet been enacted, how does the CRA intend to apply this provision, including the discretion of the Minister under proposed subsection 237.7(9) to not assess the penalty, in a manner that promotes fairness and consistency?
>
> CRA Response
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> The responses to Question B.7.i. and Question B.8.i. are provided together under Question B.8.i.

[1] See TEI submission to Department of Finance dated May 29, 2024, "Re: Budget 2024 Proposal to Expand CRA Audit Powers."

Question B.7.ii. Will there be a review committee formed to monitor how the provision may be applied?

CRA Response

The responses to Question B.7.ii. and Question B.8.ii. are provided together under Question B.8.ii.

Question B.8. *Notice of Non-Compliance Proposal*

The 2024 Budget proposes to introduce new section 237.9 to allow the Minister of National of Revenue to issue a Notice of Non-Compliance ("NNC") if the Minister determines that the taxpayer has failed to comply with an information requirement issued under sections 231.1 or 231.2 or subsection 231.6(2). The issuance of a NNC imposes penalties on a taxpayer and extends the reassessment period for the taxpayer (and in certain cases, non-arm's length persons). The process for challenging an NNC is lengthy, and we believe the NNC regime will fail to resolve substantive disputes between CRA and taxpayers and unnecessarily delay the resolution of such disputes.[2]

Question B.8.i. Acknowledging that this proposal has not yet been enacted, could the CRA comment on how it intends to apply this provision?

CRA Response: **B7(i) and B8(i)**

Thank you for raising these questions. We would like to acknowledge the concerns expressed by TEI with respect to the proposed legislation. The Department of Finance recently consulted on technical amendments announced in Budget 2024 with comments due on September 11, 2024. We look forward to the final release of the proposed legislation and are committed to issuing more guidance once new powers have come into force.

To provide some context from the CRA's perspective:

CRA's audit programs have a mandate to enhance and promote compliance with the legislation administered by the CRA in a manner that maintains trust in Canada's tax administration, ensures a level playing field for taxpayers, and supports the delivery of various tax credit programs in a timely, consistent, and prudent manner.

The CRA understands that the majority of taxpayers wish to comply with their tax obligations, as do the tax advisors who support them. However the CRA continues to be met with lack of compliance and cooperation in segments of the taxpayer population.

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[2] See TEI submission noted above.

Question B.8.ii. What factors will be relevant in determining whether an NNC will be issued?

CRA Response: **B7(ii) and B8(ii)**

The Department of Finance recently consulted on technical amendments announced in Budget 2024 . The CRA looks forward to the final release of the proposed legislation and is committed to meaningful engagement with partners as we develop our policies and guidelines.

The implementation of any new powers will be guided by the CRA's internal policies and protocols. These will be considered during the development of guidance.

Question B.8.iii. Will there be a review committee formed to determine when an NNC is warranted and to ensure the application of the provision consistently and fairly among taxpayers?

CRA Response

For any proposed measures, the CRA will evaluate and implement the appropriate oversight mechanisms to ensure consistent application.

We are committed to engagement with partners and welcome feedback and questions.

C. Administrative Matters

Question C.1. *Enhanced Trust Reporting*

Can the CRA provide an update on any discussions with the Department of Finance on the Enhanced Trust Reporting rules?

CRA Response

The Canada Revenue Agency (CRA) is responsible for interpreting and administering the legislative provisions under the acts it administers, and the Department of Finance is responsible for developing federal tax policy and legislation.

The Department of Finance recently consulted Canadians on technical amendments clarifying the trust reporting rules. Canadians were invited to share their feedback by September 11, 2024, and the CRA provided its own written response to the Department of Finance.

Additionally, with the approach of the 2025 tax season, the CRA wanted to provide certainty around bare trusts. As such, in a Tax Tip issued on October 29, 2024, the CRA confirmed that it **will not require** bare trusts to file a T3 *Income Tax and Information Return* (T3 return), including Schedule 15 (*Beneficial Ownership Information of a Trust*) for the 2024 tax year, unless the CRA makes a direct request for these filings. This is a continuation of the exemption from the trust reporting requirements that was issued for bare trusts for the 2023 tax year. The trust reporting requirements still apply to other affected trusts with taxation years ending after December 30, 2023. These affected trusts are required to file a T3 return, including Schedule 15, unless specific conditions are met. Find out more with our answers to frequently asked questions on reporting requirements for trusts.

More information and updates, when available, can be found at trust income tax return. Any questions about draft legislation should be directed towards the Department of Finance.

Does the CRA have any statistics or information on the filings received prior to the March 29, 2024 filing relief announcement?

CRA Response

Prior to March 29, 2024, the CRA received 43,798 T3 income tax returns associated with Bare Trusts.

Question C.2. *Breadth of New Reporting Requirements*

Over the past 12 months or so, there have been many provisions added to the Income Tax Act, all of which require some form of reporting, be it a new T2 schedule, a new stand-alone form or information return, or a new election. Some (non-exhaustive) examples are included in the table below.

Applicable Rules	**Type of Reporting**	**Due Date**
Reportable and Notifiable Transactions	Form RC312	Within 90 days of transaction
Reportable Uncertain Tax Treatments	Form RC3133	Filing due date
Non-qualifying Stock Options	Schedule 59	Filing due date
Section 113 Deduction Restriction	Prescribed Form	Filing due date
Share Buy-back Tax	Return	Filing due date
CCUS Rules	Various elections	

Digital Services Tax	Various elections	
Trust Reporting	T3 Return	Various
EIFEL Rules		
Excluded Interest	Election	Filing due date
Specified Pre-regime Loss	Election	Filing due date
Transfer of Cumulative Excess Capacity	Election and Information Return	Filing due date
Filing by Designated Filer	Election	Filing due date
Allocated Group Ratio Amount	Election	Filing due date
Fair Value Adjustments	Election	Filing due date
Cumulative Unused Excess Capacity	Election	Filing due date
Elected Amounts Under p. 95(2)(f.11)	Election	Filing due date

The determination as to whether an election/form should or should not be filed is not always an easy task. There is a wide range of analysis that needs to be undertaken in advance of making this determination. This is especially true for new elections – the analysis required under new provisions in the Act is not always straightforward.

As we have reiterated many times in the past, corporate tax department workloads are increasing, which is evident given this list of new filing requirements. Despite the increased workload, the resources and employees of corporate tax departments have not grown commensurately. Accordingly, we would like to hear CRA's reasons for introducing so many new elections and other filing requirements, as this seems to be a trend whenever new rules are added to the Act.

> **Question C.2.i.** What is the impetus for requiring so many elections? Using the EIFEL rules as an example, could not the information be asked for as part of an audit?

CRA Response

In the case of EIFEL, the elections in the legislation provide alternative tax treatments that may be beneficial to the taxpayer. The legislation outlines prescribed information that must be provided to the Minister. This information is required for administrative purposes, as well as the determination of risk. The complete list of EIFEL elections are

listed on our webpage Excessive interest and financing expenses limitation rules - Canada.ca.

The requirement for multiple elections, such as those under the EIFEL rules, is designed to ensure proactive compliance and efficient enforcement. While it is true that certain information could be collected during audits, filing requirements encourage taxpayers to proactively disclose information upfront, rather than waiting for audits to identify discrepancies after the fact. Further, conducting audits is resource-intensive. By having taxpayers file required elections and disclosures, the CRA can reduce the need for widespread audits and focus its resources on higher-risk cases, improving overall efficiency. Filing requirements also ensure that all taxpayers report the same information in a consistent manner, which helps maintain fairness and clarity in the application of the tax provisions.

In balancing the administrative burden on taxpayers and ensuring compliance with the new provisions in the Act, filing requirements are an essential tool to promote transparency, compliance, and efficient use of resources.

Question C.2.ii. For the many new elections that will be required, has the CRA given any thought as to how these elections will be incorporated into the filing process and what information should be required in making these elections? For example, could an election be made by way of taking a filing position without having to submit a separate form or filing (which would be greatly preferred from a simplicity perspective), or as an alternative, can taxpayers tick a box to indicate yes or no that an election is being made with the tax return, *i.e.*, as part of the T2 tax filing? TEI would be pleased to work with CRA on the simplification of elections.

CRA Response

The CRA has considered the complexity of the EIFEL rules and has developed election forms to assist taxpayers to meet their reporting requirements. We have considered simplification of the forms, to the extent possible. For example, we are not requiring filing of the received capacity information return (under subsection 18(6)) at this time. Also, the CRA has combined the Group Ratio Election in subsection 18.21(2) and the Fair Value Adjustments in subsection 18.21(4) into one election form. The draft election forms have been provided to certain external stakeholders, including TEI, as part of a consultation process. We welcome any specific comments you may have.

Question C.2.iii. Given how much information is being required, the chances of missing deadlines, or not filing elections that should have been filed, seems to be very high. What

will the CRA's process be for accepting that some of these forms will be inadvertently missed due to the sheer volume of required reporting?

CRA Response

CRA is aware of this issue and contemplating steps to address this concern. The EIFEL legislation itself contains provisions allowing us to consider amended or late filed elections in certain cases. It is also our intent to provide guidance to further assist taxpayers with their filing obligations.

Question C.3. *Duplication of Information*

As CRA requires more and more reporting, there does not appear to be any coherence around the specific information being requested. As an example:

- T2 Schedule 9 Related and Associated Corporations
- T2 Schedule 19 Non-resident Shareholders
- T2 Schedule 50 Shareholder Information
- T1134 Organization Chart of Group required
- T2 Schedule 25 Investment in Foreign Affiliates

Another example:

- T2 Schedule 29 Payments Made to Non-Residents
- NR 4 slips Non-resident Withholding
- T106 forms Reporting of Non-Arm's Length Transactions

Every reporting form required by CRA adds time for completion and review. And given the amount of information required for these forms alone, the chances of some information being inadvertently missed or incorrectly reported seems fairly high.

Question C.3.i. These forms have been in place for a long time. Has there been a review of their usefulness or the fact that they all require very similar information? Is there any program in place at CRA to assess duplicative reporting?

CRA Response

These forms are required based on federal and provincial legislative provisions in support of the administration of the T2 corporate income tax program. When new tax measures are announced, the CRA reviews current reporting requirements including forms and schedules to support efficient implementation. Where possible, new reporting

requirements are integrated into existing forms and schedules to minimize any additional burden. We would be open to reviewing any specific suggestions associated with the existing reporting requirements.

Question C.3.ii. Does CRA spend time trying to reconcile the information on all of these forms? And if so, why is the information being requested in each particular format in the first place? Our goal as leaders of corporate tax functions is to focus on productivity and to ensure that the effort and time spent on completing our compliance requirements is efficient and effective. Presumably the CRA has the same productivity goals. We would be happy to have further discussions with CRA on the duplication of current reporting requirements to determine if there is in fact a way to streamline certain types of information reported more than once.

CRA Response

To effectively and efficiently administer tax programs, reported information is required for different areas across the Agency, other government departments, as well as the provinces and territories.

During form creation and updating we often consult with stakeholders, such as TEI, who provide valuable insight and recommendations, which are taken into consideration. For example, to reduce the administrative burden with filing the T113 form, some of the recent revisions included accepting group filings, reducing the number of unconsolidated financial statements required to be filed, accepting pictorial organizational charts, and allowing taxpayers to file their information return (T106 and T1134 forms) by using the Web Access Code. The CRA recognizes the compliance burden that can arise from filing multiple forms. We welcome your suggestions on how to reduce the compliance burden for businesses.

Question C.4. *Pillar 2 Reporting*

The introduction of the GloBE Information Return ("GIR") that all Canadian UPEs must file will exponentially exacerbate the issues raised above.

There is growing concern that the amount of information necessary to complete a GIR will be very cumbersome, duplicative of other reporting, and difficult to manage in terms of its actual filing. Countries are already requiring the filing of Notifications if the Pillar 2 rules apply, and based on this preliminary experience, the quantum of information required is quickly going to get out of hand.

There are over 20 elections contained in the Global Minimum Tax Act, excluding any additional requirements under the just-released UTPR, and they all need to be made by the filing Constituent Entity – i.e., the Canadian UPE. Half of the elections must be made on an entity-by-entity basis, and the other half are made on a jurisdictional basis. Many of the elections are effective for five years. So if a multinational group consists of 200 foreign affiliates in many different countries, the number of potential elections, and the analysis needed to determine their applicability, will quickly become unmanageable.

CRA Response

Since Pillar Two is an internationally coordinated framework, the Canada Revenue Agency (CRA) has no ability to simplify the filing of Pillar Two forms. Any unilateral adjustments by a tax administration would lead to complications and additional administrative burdens internationally, as other countries would still require the excluded data. The GloBE Information Return (GIR) was developed through input from multiple countries, each expressing the need for specific data. Coordinating the GIR for universal use across implementing jurisdictions was critical to facilitate data exchange between international tax administrations and avoid duplicative filings in different jurisdictions. The complexity of the GloBE rules, developed to address substantial base erosion and profit shifting by multinational enterprises (MNEs), is reflected in the GIR. Tax administrations recognize the reporting challenges this introduces.

This is a learning process for both MNEs and tax administrations, and tax authorities plan to adopt a reasonable approach in the early years as everyone adjusts to the new rules and reporting standards. Tax administrations are still in discussions at the OECD level, just recently meeting in late October 2024, to focus on a dialogue regarding implementation and dispute prevention and resolution.

In this regard, we would like to discuss how CRA is approaching the roll-out of the GIR.

> **Question C.4.i.** Although the format of the GIR is driven by the OECD, will there be an opportunity to tailor it, at least in some fashion, to existing Canadian filing requirements?

> CRA Response

> The GloBE Information Return is a standardized return that will be used consistently between the various countries which will accept Pillar Two filings. Tax Administrations have collectively agreed on the structure of this return, and a public consultation in March 2023 gathered input on its design. Regarding the required data points, customization is not possible, as the required information was established during these prior agreements.

Question C.4.ii. Will CRA seek input from taxpayers prior to releasing the return?

CRA Response

The GIR has already been finalized and published on the OECD web site; the CRA is not at liberty to make changes to the GIR. However, the CRA is currently planning stakeholder engagement to inform and support taxpayers in preparing for their first GMTA filing obligations.

Question C.4.iii. Will there be a review of current filing requirements to determine where there is overlap that could be mitigated by eliminating other forms/schedules/elections?

CRA Response

If a duplication of information is identified when the Pillar Two filings commence, a review of these duplications may be conducted. We welcome stakeholder input to help identify specific areas and forms where the overlap occurs. The interconnectivity between CbCR and Pillar Two filings is recognized and the CRA would be open to discuss any possible changes to identify and reduce overlap at the OECD level in the future.

Question C.4.iv. How will late-filed elections be handled, especially given that several apply for 5-years? There will naturally be inadvertent omissions given the sheer volume of elections required.

CRA Response

How late filed elections will be handled is still under discussion.

Question C.5. *Reporting Fee for Services*

TEI has been pleased to participate in the Reporting for Services ("RFS") working group formed earlier this year and led by Mohammad Rahman. To gauge initial taxpayer reaction to the initiative, the CRA released an electronic document on its website in July 2024 specific to reporting fees for services. We understand that a moratorium on reporting fees for services has been in place since 2011 and that the purpose of the working group is to measure "businesses' and organizations' awareness of, and readiness to comply with, the RFS requirement".

Question C.5.i. Can the CRA confirm for what taxation year it plans to remove the moratorium and why now is the right time to do this? Compliance obligations for

taxpayers have increased dramatically in the past several years, as set forth above, and TEI is very concerned about the potential scope of this new reporting requirement.

CRA Response

The CRA has not yet finalized the timeline for lifting the moratorium on enforcing the reporting of fees for service (RFS), as we are in the final stages of analyzing data collected from Canadian businesses through the RFS questionnaire and from key external stakeholders through the RFS working group.

Question C.5.ii. To what extent is CRA considering exemptions for business-to-business transactions to minimize the compliance burden on taxpayers? Organizations such as the ones represented by our members typically have large case file managers assigned to them to conduct annual audits. These organizations are consistently subject to robust internal audits (to meet securities law requirements) and external audits (by both CRA and third-party accounting firms). Our members' organizations often also have cutting-edge internal controls in place to ensure proper reporting of revenue and expenses and to meet the scrutiny of Financial Statement reporting standards and public stakeholders. TEI believes that additional reporting for revenue earned by these entities is not likely to result in any benefit to Canadians (i.e., increase tax revenue). TEI invites a discussion on the potential impact of the RFS initiative on large taxpayers in hopes of minimizing the administrative burden.

CRA Response

- The CRA acknowledges the concerns raised about the potential compliance burden associated with the RFS initiative.
- The CRA is actively analyzing feedback from Canadian businesses and stakeholders, including TEI, and is assessing how exemptions could help further reduce the administrative burden on taxpayers, notably larger organizations that are already subject to rigorous internal and external audits.
- Ongoing engagement with stakeholders will be key throughout the roll-out and implementation of RFS, to ensure businesses are well supported to meet their tax obligations.

Question C.5.iii. Many of our members participated in a reporting fee for service questionnaire that the CRA had created to gather community input during the spring/summer of 2024. Will CRA be releasing questionnaire results and, if so, when?

CRA Response

- The CRA appreciates the participation of TEI members in the online RFS questionnaire conducted earlier this year. The feedback gathered is currently being analyzed and will be taken into consideration to support decision-making related to the RFS parameters.
- Following the completion of the data analysis, the CRA is preparing to publish an executive summary of the questionnaire results on Canada.ca.

Question C.6. *Mandatory Reporting Rules*

The reportable transaction rules in section 237.3 were expanded in 2023 to require reporting of transactions with only one hallmark under those rules, and a new regime in section 237.4 requiring reporting of notifiable transactions was implemented. At the 2023 liaison meeting, the CRA provided an update on the administration of the rules during the first 6 months the rules had been in place. Now that the rules have been in place for over one year, could the CRA provide an update of:

Question C.6.i. The number of returns filed to date under each of the reportable transaction and notifiable transaction rules;

CRA Response

As of October 15, 2024, the number of returns filed to date under each of the reportable transaction and notifiable transaction rules are as follows:

- reportable transactions: Approximately 1700
- notifiable transactions: Approximately 1100

Question C.6.ii. How the CRA is processing and utilizing information gathered under the reportable and notifiable transaction rules;

CRA Response

As applicable, the CRA is processing and utilizing information gathered under the reportable and notifiable transaction regimes:

- by forwarding transactions for additional review and audits;
- updating it's Guidance, namely on transactions that need not be disclosed; and
- to determine if a transaction is abusive.

Question C.6.iii. How many reporting entities has the CRA referred to the penalty committee;

CRA Response

The CRA has not referred any to the penalty committee as of yet.

Question C.6.iv. For how many taxpayers has the CRA approved the imposition of penalties under sections 237.3 or 237.4 since June 2023;

CRA Response

The CRA has not approved any as of yet.

Question C.6.v. What training is provided to the individuals in the Winnipeg Tax Centre, Data Assessment and Evaluation Programs who are reviewing the forms?

CRA Response

The individuals in the Winnipeg Tax Centre, Data Assessment and Evaluation Programs are not reviewing the forms; the forms are sent to a specialized team within the Tax Avoidance Division at HQ. The team consists of seasoned professionals that triage the forms for additional reviews and audits, where applicable. They undergo regular professional training.

Question C.7. *General Anti-Avoidance Rule (GAAR) Reporting*

To avoid a potential 25% penalty if CRA successfully asserts GAAR applies to a transaction, new subsection 245(5.1) provides that a taxpayer must have disclosed the transaction to the CRA under section 237.3 or 237.4 (the reportable and notifiable transaction disclosure rules).[3] We anticipate that many taxpayers will protectively disclose transactions that they do not believe are subject to the GAAR because the penalty is so punitive and to avoid tolling of any statutory limitation period. In addition, given the breadth of the reportable and notifiable transaction rules, risk averse taxpayers may choose to report transactions which they do not believe are reportable or notifiable transactions, but for which uncertainty exists. We understand that the CRA welcomes and encourages such proactive disclosure.

[3] Subject to the due diligence defense in subsection 245(5.2).

Currently, taxpayers are required to disclose reportable and notifiable transactions on Form RC312 – Reportable Transaction and Notifiable Transaction Information Return. RC312 has not been updated to reflect that transactions that are neither reportable nor notifiable may be disclosed, whether to avoid a GAAR penalty or out of an abundance of caution with respect to the uncertain application of the reportable and notifiable transaction rules. In addition, RC312 presupposes that a disclosed transaction includes both a tax benefit and an avoidance transaction. The existence of tax benefit and/or avoidance transaction may be uncertain. A taxpayer may genuinely believe that neither the GAAR nor the reportable transaction and notifiable transaction rules apply to a particular transaction on the basis that a tax benefit and/or an avoidance transaction do not exist but may wish to report such transaction in recognition that the CRA may disagree with that position. Further, while subsection 237.3(12) provides that the filing of an RC312 form is not an admission that subsection 245 applies, it does not provide that it is not an admission with respect to statements contained in the form (e.g., the existence of a tax benefit or an avoidance transaction) that may be relevant to the application of subsection 245 – we would expect CRA to rely on such statements in a subsequent dispute.

The form should permit a taxpayer to indicate that, in its view, the transaction does not result in a tax benefit and/or is not an avoidance transaction but is being disclosed solely to protect against penalties in the event CRA challenges that position. Given that the taxpayers are required to complete the form "to the best of [their] knowledge and with the information available to [them] at the time of filing", a form which precludes taxpayers from reporting transactions consistent with their tax filing position either precludes taxpayers from making the proactive disclosure the GAAR penalty and the reportable and notifiable disclosure rules are intended to promote (thus exposing them to civil penalties if CRA disagrees with their position), or requires them to make an apparently false statement in their return, exposing them to criminal sanction in order to avoid the imposition of civil penalties, and constituting admissions that may assist the CRA in litigation as to the application of the GAAR. Such a catch-22 is untenable. Can the CRA please comment on when it intends to revise the form to reflect the ability to report a transaction protectively under GAAR, and whether it will make the changes suggested herein to allow taxpayers to make proactive disclosure while accurately reporting their tax reporting positions?

CRA Response

A stakeholder desk message was recently issued along with a Notice to Reader statement posted on the RC312 Forms website. It stated that:

> To file an optional disclosure under subsection 237.3(12.1) of the Income Tax Act, please complete existing Form RC312, Reportable Transaction and Notifiable Transaction Information Return, with the prescribed information and make a reference to the optional disclosure in Part 4 of the form.

The RC312 form is currently being updated with an expected release in 2025.

Question C.8. *My Business Account*

Can the CRA please comment on its efforts to make the authorization of personnel to access My Business Account or Represent a Client more efficient? In past liaison meetings, TEI has expressed its frustration with obtaining access to accounts due to the need for "owners" to authorize access. In addition, the creation of non-resident online accounts continues to be almost impossible for similar reasons. TEI continues to firmly believe that the authority to grant access to CRA accounts should rest at the same level (officer) as those who are able to sign a tax return or election. In our view, the existing system for taxpayers would be akin to requiring the Minister of National Revenue or CRA Commissioner to individually sign audit proposal letters or Notices of Reassessment because senior CRA officials were not considered to have sufficient authority. TEI invites CRA's comments in this regard, particularly as to why someone with the authority to sign tax returns is not senior enough to grant authority for access to online information. The current system does not work for corporate groups that add business numbers frequently.

CRA Response

Updating directors and officers

Access to corporate tax information also provides information on how to update corporation and director information, as well as how to add the SIN of a director to enable online access.

- When there is a change of control or acquisition, we depend on the client to inform CRA.
- It should be noted not all corporate registries share or maintain officer information, so requests to update officers can also be submitted to the CRA.
    - Requests to add officers of a corporation need to be accompanied with official documentation signed and dated by a director or officer already listed on the business as an authorized person in the organization to validate the update request. In addition, the CRA may contact an existing director or officer to validate the request. s
    - In addition, if the officer requires access to My Business Account, they should also provide their SIN to be added to the account.
- Anyone with access to Represent a Client can use the Submit Documents service to upload a signed request to update corporation and director information, even if they do not currently have access to the business account.
- Non-resident directors need to take the extra step of informing the CRA of their non-resident status. It is important to ensure residency information is correct and up-to-date to avoid delays. Incorporating authorities do not normally provide it as part of the information they send to the CRA.

The CRA has recently implemented the Document verification service to Verify your identity without waiting for a CRA security code, giving taxpayers full and immediate access to the CRA sign-in services.

To learn more about this service and registering for and managing sign-in services, you can go to Help with using the CRA sign-in services.

We are planning to implement changes in My Business Account that will enable owners including officers and directors to associate their SIN to business accounts that will also make obtaining online access easier. (Projected to be launched in May 2025).

Authorizations

Business owners including officers and directors can designate a delegated authority within their organization, such as a financial officer, to deal with tax matters on their behalf. To do this, the owner or director needs to sign in to My Business Account at least once to authorize this person as a level 3 delegated authority.

The CRA requires the consent of a taxpayer before disclosing or allowing access to a tax account. That is why we have implemented enhanced security measures as part of the process to obtain authorized access to accounts through Represent a Client.

The protection of taxpayer information is the utmost importance to the CRA and we strive to offer a balance between service and security. The CRA continues to engage stakeholders and monitor new technology such as the document verification service that may offer changes that will provide another service option without impacting the security of taxpayer information.

Question C.9. *Form T2200*

The CRA administrative position[4] with respect to the deduction of home office expenses indicates that that the employer must require the employee to work from home. This requirement does not have to be part of the employment contract, however, it should be a written or verbal agreement. CRA has further clarified that if an employee has voluntarily entered into a formal telework arrangement with their employer, the employee is considered to have been required to work from home.

Question 6 on Form T2200 asks the employer to certify that the employee was required to use a part of their home for work. Consistent with CRA's administrative position, Form T2200 indicates that such requirement does not have to be part of the employee's contract and may be

[4] Eligibility criteria - Detailed method - Home office expenses for employees - Canada.ca

written or verbal. However, Form T2200 does not include the further clarification that a voluntary formal telework arrangement is sufficient to meet the requirement.

To avoid confusion, we recommend CRA clarify on Form T2200 that an employee is considered to have been required to work from home even if the formal telework arrangement is voluntary.

CRA Response

The rules for claiming home office expenses have not changed from 2023 to 2024. Accordingly, an employee who has voluntarily entered into a formal telework arrangement with their employer is considered to have been required to work from home. As this guidance is already available at Eligibility criteria - Detailed method - Home office expenses for employees - Canada.ca, it was not added to Form T2200 for 2024.

Question C.10. *Functional currency filers*

This question is a follow up to Question 6(b) from the 2023 TEI – CRA Liaison meeting. Since our last meeting, non-Canadian dollar functional currency taxpayers have noted that they are able to access corporate income tax account details on My Business Account, which is a welcome and appreciated development.

However, there is still no ability to see details of the payments/refunds on account by taxation year. This information can only be obtained by requesting the information over the phone or via fax.

> **Question C.10.i:** Would CRA consider adding such functionality to My Business Account in the future?
>
> CRA Response
>
> This is not an option that the CRA is currently considering. That said, taxpayers can request a statement of account which will provide these details.
>
> In addition, there are still some challenges as a non-Canadian dollar functional currency taxpayer regarding the foreign exchange rate used by the CRA when Notices of Assessment are issued. It seems that the CRA converts the functional currency net balance owing to a Canadian Dollar net balance owing and then applies the installments on file using a Canadian Dollar balance. No information is provided regarding what foreign exchange rates were applied to the net balance, which would be helpful in account reconciliation.

CRA Response

Reported amounts are converted to Canadian dollars on the balance due date(s). The exchange rate applied is based on the Bank of Canada rate of the balance due date(s).

Question C.10.ii: Could the CRA include with Notices of Assessments for taxpayers who have made a functional currency election details relating to the Canadian dollar net balance including foreign exchange rate conversions made and applied to the balance?

CRA Response

Steps used to calculate these details must be requested by taxpayers as current system architecture does not allow for these details to be included with Notices of Assessments.

Question C.11. *Withholding Tax Obligations under Regulation 105*

Budget 2024 proposed to provide the CRA with the legislative power to waive the Regulation 105 withholding tax under certain conditions.

On August 12, 2024, the Department of Finance released legislative proposals relating to the 2024 Budget measures to amend section 153, by adding proposed subsection 153(8), which reads:

> **(8)** The Minister may
> **(a)** waive the requirement under subsection (1) to deduct or withhold amounts from payments described in paragraph (1)(g) to a non-resident during a period of time specified by the Minister if the Minister is satisfied that
> **(i)** the payments
> **(A)** are income of a treaty-protected business of the non-resident, or
> **(B)** would not be included in computing the income of the non-resident because of paragraph 81(1)(c), and
> **(ii)** the conditions established by the Minster are met; and
> **(b)** revoke a waiver made under paragraph (a) if the Minister is no longer satisfied that the conditions referred to in paragraph (a) are met.

In the Explanatory Notes, the Department of Finance recognizes that the current waiver process granted on a transaction-by-transaction basis is inefficient. New subsection 153(8) is added to improve efficiency and will permit the CRA to waive the withholding requirement, over a specified period, for payments described under proposed subparagraph 153(8)(a)(i), and provided conditions established by the Minister are satisfied. The Explanatory Notes do not provide more details on the conditions under subsection 153(8)(a)(ii), stating that the Minister of National Revenue may specify other conditions.

Over the years, there have been significant comments and recommendations to improve the efficiency of the Regulation 105 process by the tax communities. The government's Advisory Panel on Canada's System of International Taxation submitted recommendation 7.3 (certification-based process) to improve the Regulation 105 compliance obligations in its Final Report on Enhancing Canada's International Tax Advantage dated December 2008 ("Final Report"). Canadian businesses are still facing the issues raised in the Final Report and TEI encourages CRA to take these into consideration in developing the administrative procedure of the proposed 153(8).

More specifically, TEI recommends CRA expand the use of Form NR301 *Declaration of eligibility for benefits (reduced tax) under a tax treaty for a non-resident person*[5] to waive the Regulation 105 withholding tax under proposed subsection 153(8). The submission of Form NR301 by the non-resident to the Canadian taxpayer could be included as a condition established by the CRA under proposed subparagraph 153(8)(a)(ii)[6]. Form NR301 could be easily modified to include income under subparagraph 153(8)(a)(i). This form would be kept by the payer and made available to the CRA upon request. The payer would still complete and file a T4A-NR summary and slip with the CRA. The T4A-NR Form – Box 23 could be modified to include code "3", whereby a "3" means that both the non-resident and the payer completed Forms NR301, NR302 or NR303, allowing for a waiver of the withholding tax due.

The use of the Forms NR301, NR302 or NR303, along with the filing of T4A-NR summary and slip, would provide operational flexibility to Canadian businesses, ease the Regulation 105 compliance obligations while still providing the necessary information to the CRA upon audit.
s
Would the CRA consider implementing the above recommendations?

CRA Response

We appreciate and thank the TEI for sharing their proposed recommendations with the CRA.

The CRA recognizes the importance of improving the Regulation 105 process and is committed to consulting and engaging with stakeholders to implement practical and fair solutions. Consultations will be held in the current year. All proposed recommendations will be given due consideration.

Question C.12. *Regulation 105*

In technical interpretation 2022-0943241E5 (E), the CRA clarified its new position on the application of Regulation 105 to services billed by a non-resident for services rendered in Canada. In the hypothetical situation, a Canadian taxpayer ("CanCo") engages a non-resident of

[5] Partnerships should use Form NR302 and hybrid entities should use Form NR303.
[6] To the extent the payer received Forms 301/302/303 from the non-resident, the requirement to withhold under subsection 153(1) for payment described under subparagraph 153(8)(a)(i) would be waived.

Canada ("USCo") to provide services, some of which are to be rendered in Canada. USCo subcontracts its Canadian subsidiary ("CanSub") to provide the services that are to be rendered in Canada.

CRA's view is now that the fees for services rendered by CanSub (paid by USCo to CanSub and passed on to CanCo) are subject to withholding under Regulation 105.[7]

What is the rationale for the change in CRA's position from its comments in document 2008-0297161E5?

Our understanding, based on the Tax Court's decision in *Weyerhaeuser Company Limited v The Queen* (2007 TCC 65), is that the purpose of the withholding tax requirement is to ensure that funds are available if Canadian income tax is assessed against a nonresident in respect of *income earned* in Canada. In reality, absent Regulation 105, the only income that might escape Canadian taxation in the scenario above is any amount charged by USCo to CanCo in excess of what CanSub charged USCo. Instead, the income is taxed twice: once as revenue of CanSub and once as withholding tax pursuant to Regulation 105.

In addition, the policy puts an unnecessary administrative burden on non-residents that do not otherwise have a presence in Canada.

In TEI's view, this result is perverse and unfair to both USCo and CanCo. Income earned in Canada should be taxed only once. In addition, the amount charged by USCo to CanCo is not "income" earned by a non-resident. It is revenue offset by a corresponding – and easily traceable – expense. TEI submits that CRA's interpretation is squarely outside the spirit of the legislation and the Tax Court's interpretation of that legislation.

TEI is also concerned that the change in interpretation will have a negative impact on the Canadian tax base. Non-resident service providers will now be motivated to avoid Canadian subcontractors altogether – including their own subsidiaries – rather than deal with the administrative and fiscal burden, such that there will no longer be any income to tax.

[7] To clarify, the amounts above are all fees. We understand and agree with CRA's position that reimbursements of expenses would not be subject to withholding, even if they are incurred by CanSub, provided they are properly detailed in the invoices from CanSub to USCO and from USCo to CanCo.

CRA Response

The answer in CRA document 2022-0943241E5 was in response to a question that asked clarifications about a position expressed in CRA document 2019-0823641I7, which did not appear to be fully consistent with the views in document 2008-0297161E5.

In *Weyerhaeuser*, the conclusion of the Court was that no withholding was required on amounts paid to reimburse the non-resident contractor for meals, travel and other outlays of the same nature.[8] The position in CRA document 2008-0297161E5 expanded the conclusion of the Court to payments to subcontractors. That CRA position was reversed in 2022.

The 2022 CRA document indicates that the CRA will administer Regulation 105 in a manner which is consistent with the conclusion of the Court. Out of pocket outlays for travel, meals and similar items are not part of the Regulation 105 base where the client has agreed to reimburse them. Otherwise, Regulation 105 applies to fees, commissions or other amounts paid for services rendered in Canada.

Later at this conference, the Department of Finance will respond to your questions dealing with the policy underlying Regulation 105.

Question C.13. *Application of Subsection 211.92(11) to Dispositions by Partnerships*

The CCUS ITC recovery rules in subsections 211.92(9) and (10) generally apply where a taxpayer disposes of (or exports from Canada) a property for which the taxpayer's qualified CCUS expenditure resulted in the determination of a cumulative CCUS development tax credit or CCUS refurbishment tax credit. Both recovery rules are subject to subsection 211.92(11), which generally applies where a vendor disposes of all or substantially all of its property that is part of a CCUS project to a purchaser and the vendor and purchaser jointly elect in prescribed form to have subsection 211.91(11) apply in respect of the disposition.

The preamble in subsection 211.92(11) requires the vendor to be a qualifying taxpayer, which is defined as a taxable Canadian corporation. Subsection 211.92(12) provides, if subsection 127.44(11) has at any time applied to add an amount in computing the CCUS tax credit of a partnership, that subsections 212.92(2) to (11) shall apply to determine amounts in respect of the partnership for purposes of Part XII.7 as if, among other things, the partnership were a taxable Canadian corporation.

Where subsection 211.92(12) applies, it seems that a partnership should be treated as if it were a taxable Canadian corporation for the purposes of subsection 211.92(11). Consequently, if such a partnership disposed of assets constituting all or substantially all of the assets of a CCUS project

and the disposition was made to a taxable Canadian corporation, the partnership should be considered a qualifying taxpayer for purposes of subsection 211.92(11).

Question C.13.i: Does CRA interpret subsections 211.92(11) and (12) in this manner and can it comment on whether an election could be made under subsection 211.92(11) in the following disposition scenarios:

(a) Aco and Bco are taxable Canadian corporations. Aco and Bco have been the only members of Partnership A since it was formed to develop a qualified CCUS project. All of the CCUS development tax credits and CCUS refurbishment tax credits from the qualified CCUS expenditures of Partnership A for the project have been allocated to Aco and Bco in accordance with their respective partnership interests. At some point following the first day of commercial operations for the project, Partnership A disposes of all of the project assets to Cco, another taxable Canadian corporation. Partnership A and Cco wish to make a joint election under subsection 211.92(11) to defer Part XII.7 recovery taxes.

(b) Similar facts to (a), except that, instead of disposing of the project assets to Cco, Aco and Bco amalgamate to form Amalco, a taxable Canadian corporation, at some point after the first day of commercial operations for the project, resulting in the termination of Partnership A by operation of law and the acquisition of the project assets by Amalco. A joint election under subsection 211.92(11) is desired to be filed for Partnership A (as vendor) and Amalco (as buyer) for Partnership A's disposition of the project assets.

(c) Similar facts to (a), except that, instead of disposing of the project assets to Cco, Aco acquires the shares of Bco and Bco is wound-up and dissolved into Aco, resulting in the termination of Partnership A by operation of law and the acquisition of the project assets by Aco. A joint election under subsection 211.92(11) is desired to be filed for Partnership A (as vendor) and Aco (as buyer) for Partnership A's disposition of the project assets.

(d) Similar facts to (a), except that, instead of disposing of the project assets to Cco, Aco and Bco dissolve Partnership A, receiving their respective pro-rata shares (90% to Aco and 10% to Bco) in all of Partnership A's project assets. Aco and Bco each wish to make a joint election under subsection 211.92(11) in respect of the disposition of Partnership A's project assets.

Question C.13.ii: To the extent the CRA interprets subsections 211.92(11) and (12) to permit elections under subsection 211.92(11) for dispositions of qualified CCUS assets by partnerships to taxable Canadian corporations, does the CRA consider the purchaser referred to in paragraph 211.92(11)(c) to be deemed under that provision to have filed the relevant project plans filed by

the designated partner(s) of the partnership (per NRCAN project plan filing guidance)[9] since the requirement to file a project plan falls to taxpayers (and therefore not partnerships) under section 127.44?

CRA Response

The Income Tax Rulings Directorate will provide a technical interpretation.

[9] Carbon Capture, Utilization, and Storage (CCUS) Investment Tax Credit (ITC) How to submit your project plan (canada.ca)

Annex A:

List of Tax Services Offices' Directors and Assistant Directors of Audit responsible for International and Large Business audit program

Atlantic Region

Nova Scotia Tax Services Office (NSTSO)
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Assistant Director of Audit (ADA) - Large Business:
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Ontario Region

Western Ontario TSO
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Toronto TSO
Director
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Assistant Director of Audit (ADA) - Large Business:
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Quebec Region

Montréal Tax Services Office (TSO)
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Assistant Director of Audit (ADA) - Large Business:
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Western Region
High Complexity Audit Tax Services Office (HCATSO)
Director
Mal Gill
Email: Malwinder.Gill@cra-arc.gc.ca

Assistant Director of Audit (ADA) - Large Business:
Baljeet Chahal
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Annex B:

List of HQ Director Generals:

Appeals - Tax and Charities Appeals Directorate: blair.hammond@cra-arc.gc.ca
Assessment, Benefit and Service Branch - Business Returns Directorate: adnan.khan@cra-arc.gc.ca
Collections and Verification Branch - Business Compliance Directorate: mohammad.rahman@cra-arc.gc.ca
Compliance Programs Branch -
International and Large Business Directorate: priceela.pursun@cra-arc.gc.ca
Business Tax Incentives Directorate (formerly SR&ED): lorraine.redekop@cra-arc.gc.ca
Legislative Policy and Regulatory Affairs Branch -
Income Tax Rulings Directorate: costa.dimitrakopoulos@cra-arc.gc.ca
Legislative Policy Directorate: isabelle.brault@cra-arc.gc.ca