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2024 TEI Canadian Commodity Tax Committee Liaison Questions for Canada Revenue Agency

1. Federal Excise Tax Refunds for Aviation Fuel

Certain TEI members file refund claims with respect to excise tax on aviation fuel on the basis the fuel is for use as ships' stores. Such applications for refunds are made with *Form N-15, Excise Tax – Application for Refund*. Historically, such aviation fuel suppliers have submitted customers' licences with Transport Canada in support of their claims. However, some members have recently been advised from certain Excise Audit teams that this practice will no longer be accepted. The view provided by the Excise Audit team was that only completed and stamped *K36A – Ships Stores Declaration and Clearance Certificate* or flight manifests from the customer would be acceptable. Impacted TEI members are concerned that tracking and managing of Form K36A for every single flight would administratively burdensome and require increased resources. Further, flight manifests may contain confidential or sensitive information which could pose difficulties in sharing these manifests with the Canada Revenue Agency.

Questions for CRA

(a) Can the CRA confirm that it will no longer accept customer licences as support for excise tax refund requests for fuel for use as ships' stores and if so, can the CRA provide the reasoning for this shift in administrative policy?

(b) Aside from providing form *K36A Ships' Stores Declaration and Clearance Certificate* for each delivery, what alternative documentation could the dealer provide that would be acceptable to the Minister? What detailed information must be provided?

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2. Federal Fuel Charge and Renewable Propane

The term "renewable diesel" is not defined under the *Greenhouse Gas Pollution Pricing Act* (Canada) ("GGPPA"). On November 21, 2023, the Canada Revenue Agency released RITS 9000111 specifying that any amount of renewable diesel blended with light fuel oil is subject to the Federal Fuel Charge rate applied to light fuel oil in Schedule 2 of the GGPPA for the relevant year.

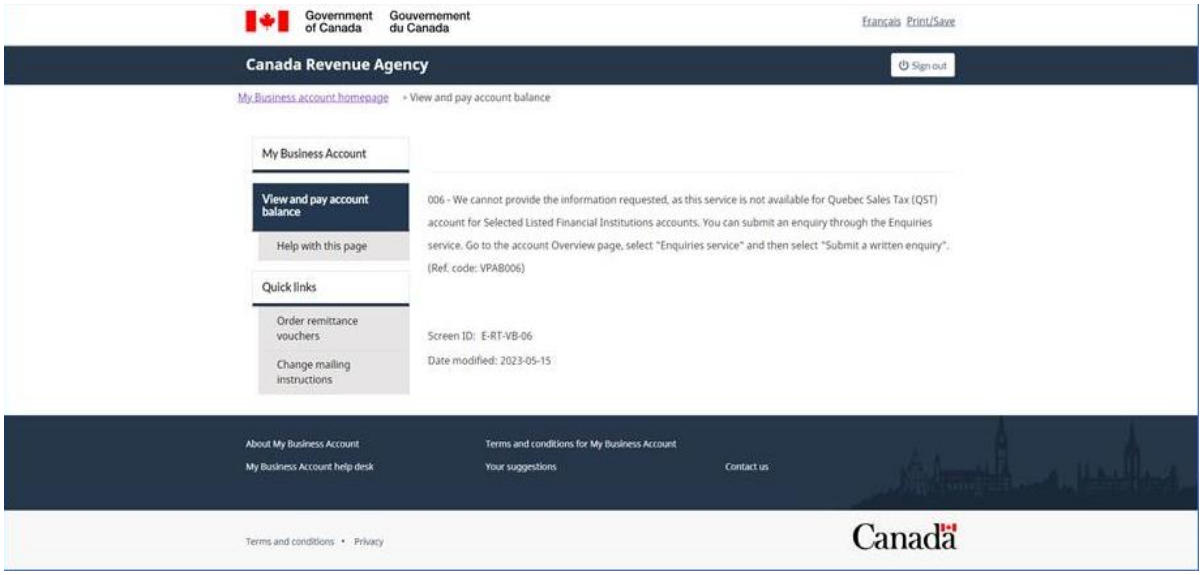
Question for CRA

Can the CRA comment on how this would apply to renewable propane? For example, does this mean renewable propane would be subject to the Federal Fuel Charge rate applied to propane as set out in Schedule 2 of the GGPPA for the relevant year?

3. My Business Account and SLFIs

Despite the Canada Revenue Agency administering the GST/HST and QST for Selected Listed Financial Institutions ("SLFIs"), neither My Business Account nor Represent a Client allows SLFIs to electronically access up-to-date account activity information. This inability to gain up-to-date access to important information persists despite the fact that the QST was "harmonized" with the GST on January 1, 2013. In the past, when clicking on the link for account activity and balances taxpayers always received an error message that was vague, but now the error screen specifically states the following:

006- We cannot provide the information requested, as this service is not available for Québec Sales Tax (QST) account for Selected Listed Financial Institutions accounts. You can submit an enquiry through the Enquiries service. Go to the account Overview page, select "Enquires service" and then select "submit a written enquiry" (ref. code. VPAB006)".



The lack of the ability to obtain balance and transaction activity electronically for SLFI accounts, especially when combined with CRA's practice of transferring balances between program accounts automatically (i.e. balances are transferred from RT accounts to RC, RP, etc. and vice versa by CRA without notification to the taxpayer), impedes taxpayers' abilities to manage not only their accounts, but also their compliance obligations. Because of this, reconciliation of RT accounts for GST and QST SLFI accounts requires a request for a paper statement (which often takes over a month to receive).

In addition to the time SLFIs must spend submitting requests for and waiting to receive copies of paper statements, SLFIs must also dedicate additional time to complete this work because often it is the case that different persons within a company, like a large SLFI, are responsible for the different taxes that fall under a particular program identifier account (e.g. a different person is charge of GST which falls under the "RT" program identifier than is in charge for corporate tax that falls under the "RC" program identifier). This situation is exacerbated when taxpayers have multiple taxation years impacted due to outstanding rebate claims, court decisions, Notices of Objection or Audits.

Question for CRA

TEI members would like the CRA to provide a timeline on when we can expect to see the necessary systematic updates that would allow SLFIs to electronically access the necessary account information via My Business Account and Represent a Client.

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4. Authority for CRA to assess QST amounts in absence of legislation

Budget Implementation Act, 2023, No. 1 ("Bill C-47") amended the definition of "financial service" in subsection 123(1) of the *Excise Tax Act* (Canada) ("ETA") in respect of payment card clearing services. The in-force provisions provided that such amendments were generally effective back to 1991 and provided the Canada Revenue Agency with one year from the date of Royal Assent to assess beyond the periods in section 298 of the ETA relating to this payment card clearing services in respect of GST/HST. Royal Assent was received on June 22, 2023.

In Bulletin 2023-3, the Government of Québec announced on April 6, 2023 that it would mirror such amendments for payment card clearing services in *An Act respecting the Québec sales tax*. *An Act to give effect to fiscal measures announced in the Budget Speech delivered on 21 March 2023 and to certain other measures* ("Bill 49"), which contained the payment card clearing services amendments for Québec Sales Tax, was introduced in the Québec National Assembly on February 8, 2024. Bill 49 was assented to on May 7, 2024. The in-force provisions of Bill 49 were similar to Bill C-47 in that it provided one year from the date of assent to assess QST in respect of payment card clearing services.

As the CRA is responsible for administering both GST/HST and QST for selected listed financial institutions ("SLFI"), CRA was the appropriate tax authority to audit and assess QST in respect of payment card clearing services for SLFIs.

Several TEI members were assessed by CRA for QST on payment card clearing services at the same time as assessments for GST/HST, however such assessments for QST occurred prior to the date of assent (May 7, 2024) of Bill 49. As a result, it is TEI's view that such QST assessments were without proper legal authority and should not have been made until after the date of assent of Bill 49 – even if that meant CRA would have had to issue two different assessments (one for GST/HST and one for QST). However, given the retroactive nature of the payment card clearing services amendments, it gave registrants little choice but to pay the QST amounts as assessed or else be assessed interest on such assessments.

Question for CRA

Should a similar circumstance of differing effective dates between GST/HST and QST legislative changes arise in future, TEI respectfully requests that the CRA follow proper audit and legislative procedure and await the requisite legislative amendments receiving Royal Assent prior to raising any assessments of QST against SLFIs.

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5. Authorized Signing Officer vs. Authorized Representative

The *Election or Revocation of an Election for Closely Related Corporations and/or Canadian Partnerships to Treat Certain Taxable Supplies as Having Been Made for Nil Consideration for GST/HST Purposes* (RC4616) [i.e. the 156 election] is required to be signed by a person that is "authorized to file on behalf of the specified members…" The Canada Revenue Agency's list of services for representatives of businesses (https://www.canada.ca/en/revenue-agency/services/e-services/represent-a-client/list-services-representatives-businesses.html) provides that Level 2, Level 3 and Legal Representatives access is required to be eligible to file an election.

In contrast, various other forms including the *GST/HST Election Concerning the Acquisition of a Business or Part of a Business* (GST44 form) [i.e. the 167 election] is required to be signed by a person that is "authorized to sign on behalf of the [supplier/recipient]". Similar wording also appears on the *Election and Revocation of an Election Between Agent and Principal* (GST506) [i.e. the 177(1.1) election].

The wording "authorized to sign on behalf of the [company]" implies that the signatory must be a person that is authorized to bind the corporation under corporate law and not authorized with the CRA as a Level 2, Level 3 or Legal Representative.

However, our members have experienced CRA rejecting GST44 forms that are signed by persons authorized under corporate law to sign on behalf of the corporations on the basis that the signatory is not an authorized person if such signatory does not have Level 2 or 3 access with CRA. This is despite our members providing corporate resolutions evidencing the signatory is authorized to sign on behalf of the corporation.

Questions for CRA

(a) Could the CRA comment on their view of the authorization required for a person to sign an election where the signatory is "authorized to sign on behalf of the [company]" and the reason for the inconsistent approach across the various on the type of forms with respect to what type of individual the CRA will accept as signatory?

(b) Further could the CRA consider providing guidance that elections should be accepted if the registrant provides evidence that the signatory is authorized to sign on behalf of the registrant even if such person is not a Level 2 or 3 representative?

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6. Canada Revenue Agency inquiries regarding Excise Tax for imported insurance

TEI members are receiving inquiries from the Excise Tax division of the Canada Revenue Agency regarding insurance policies that are believed to have been acquired from non-resident insurers. The non-resident insurers have declared specific policy numbers in a filing with CRA that is suggestive that the federal excise tax ("FET") has not been paid in respect of such policies.

The inquiries from CRA are extremely vague, do not reference policy numbers, nor the value of premiums. CRA agents have noted it would be a breach of confidentiality if additional information were to be disclosed. The lack of information is making it very difficult and time consuming for TEI members to seek confirmation from the local placing brokerages as to whether FET is applicable or had already been paid by another insurer or brokerage in the supply chain.

Question for CRA

Is the CRA able to provide clear communication with specificity going forward so that these matters can be addressed more expediently?

7. E-invoicing update

The Canada Revenue Agency has been engaged in a multi-year project reviewing the feasibility of adopting electronic invoicing in Canada.

Questions for CRA

(a) Could the CRA provide an update on this project and the current anticipated timeline?

(b) Additionally, does the CRA intend to engage and seek stakeholder input and comments? If so, when does the CRA intend to launch stakeholder engagement? TEI would be pleased to participate in stakeholder engagement sessions to ensure the adoption of any e-invoicing proposals works for both the CRA and businesses.

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8. Update on FI bulletins

Taxpayers rely upon various Canada Revenue Agency publications to interpret complex legislation and regulations. Several of these publications have not been updated for more than 20 years, despite significant changes in the business environment (e.g., globalization, technological advances, and new products/services offerings).

At the 2019 TEI-CRA Liaison Meeting, the CRA provided the following update:

1. The following memoranda were being updated and anticipated that these would be available the following year:

- GST/HST Memorandum 17.6, *Definition of "Listed Financial Institution"*
- GST/HST Memorandum 17.6.1, *Definition of "Selected Listed Financial Institution"*
- GST/HST Memorandum 17.14, *Election for Exempt Supplies*
- GST/HST Memorandum 17.16, *GST/HST Treatment of Insurance Claims*

2. A new memorandum was being developed to replace GST/HST Memorandum 17-9, *Insurance Agents and Brokers*.

3. A new memorandum was being GST/HST Technical Information Bulletin, B-052, *GST Treatment of Products and Services of Life and Health Insurance Companies*. Our understanding is that the Canadian Life & Health Insurance Association provided its comments to the CRA in response to the CRA's consultation on Notice 325: *Services Provided by Certain Insurance Intermediaries* in October 2023.

4. The following memoranda are also currently being updated, but we do not have an anticipated release date:

- GST/HST Memorandum 17.7, *De Minimis Financial Institutions*
- GST/HST Memorandum 17.8, *Credit Unions*

5. A new GST/HST Memorandum, 17.6.2, *GST/HST Registration and Reporting Requirements for Listed Financial Institutions, Including Selected Listed Financial Institutions* is being worked on to replace GST/HST Notice 265.

6. Updating the following memoranda are currently on our to-do list:

- Memorandum 17.1, *Definition of "Financial Instrument"*
- Memorandum 17.1.1, *Products and Services of Investment dealers*
- Memorandum 17.2, *Products and Services of a Deposit-Taking Financial Institution*
- Memorandum 17.10, *Tax Discounters*

At the time, the CRA indicated it planned to wait until proposed amendments, such as the addition of paragraph (f.1) to the definition of "financial instrument", became law, before updating this memorandum.

Question for CRA

Could the CRA please provide an update regarding the timeframe for updates to these publications and the anticipated release dates?

9. Department of Finance Proposal to expand the Joint Venture Election Rules

The Department of Finance has released proposed section 273.01 of the *Excise Tax Act* (Canada) and commenced consultations with stakeholders and users of the Joint Venture Election. We understand that Canada Revenue Agency has also been consulted and provided input.

Proposed section 273.01, as drafted, contains filing requirements for the election to be filed with CRA for each joint venture. As CRA may already be aware, the energy industry consists of many thousands of joint ventures, where joint venture interests are constantly changing.

The energy industry is extremely concerned with the filing requirement as it causes undue burden on the industry, given the fluid nature of oil and gas joint ventures. The industry anticipates that the filing requirement will require dedicated resources to fulfill this requirement.

Questions for CRA

(a) Given the volume of joint venture elections that will be filed with CRA will be in the thousands (which will also be subject to regular amendments given the fluidity of the joint ventures as described above), what is CRA's position on the proposed requirement from the Department of Finance that all joint venture elections must be filed (and updated, as applicable) with the CRA?

(b) If so, what is the policy intent of CRA and what is the outcome the CRA intends to achieve from the filing of these joint venture elections?

(c) If the filing requirement is enacted, does the CRA have resources or capacity to process these elections?

(d) If the intended result is for the CRA or Parliament to have visibility into whether certain persons are engaged in a joint venture, whether it be as an Operator, Participant, or both, as well as the type of joint venture activity, would CRA consider alternative measures to achieve this outcome (i.e. a form of a questionnaire exercise that can be performed via MyBusiness account profile, or the filing of an annual information return by the Operator of a joint venture)?

(e) Can the CRA provide any additional insight into whether it has concerns with the current or proposed Joint Venture legislation and whether additional input or information sharing from TEI members would be of assistance?

(f) Can the CRA provide details on the nature of the types of audit issues for which it is issuing assessments with respect to entities who utilize the current joint venture election under section 273 of the ETA?

10. Late Filing Penalty on Amended Return

Assumption: Assume a tax or information return was filed before the deadline as required under the provisions of the various statutes administered by the Canada Revenue Agency (i.e the *Excise Tax Act, Greenhouse Gas Pollution Pricing Act*, etc.).

Questions for CRA

(a) Where a person, registrant, taxpayer, etc., as the case may be, subsequently requests or makes an amendment to such a return (i.e. amended return), what is the CRA's policy in respect of the imposition or assessment of a late filing penalty?

(b) Would there be instances where CRA may not take into account or consider the original filing date and treat the amended return as the proper filed date giving rise to the imposition or assessment of a late filing penalty?"

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11. Ability for Digital Platform Operators to collect and remit GST/HST on supplies made by persons registered under Subdivision D of Division V of Part IX of the *Excise Tax Act (Canada)*
[Companion question also raised to Finance]

Persons registered for GST/HST under Subdivision D of Division V of Part IX of the *Excise Tax Act* (Canada) ("ETA") ("Subdivision D") who make sales of qualifying tangible personal property supplies or specified supplies (collectively, "supplies") through a digital platform operator ("DPO") remain responsible for tax collection and remittance on those supplies. This means that DPOs have to rely on information provided by sellers to determine whether the DPO or the seller has the responsibility for tax collection and remittance on a particular supply. This creates complexity and a significant burden for DPOs who have had to implement systems logic and tracking to properly manage and report sales through the digital platform.

One mechanism that would simplify the collection and remittance of tax for marketplace sellers, DPOs, and the Canada Revenue Agency alike would be to allow DPOs to collect and remit GST/HST on all sales of qualifying tangible personal property or specified supplies made through the platform, even for sellers that are registered for GST/HST under Subdivision D.

While there are several avenues that could be used to achieve this, one that could be handled administratively by the CRA without the need for legislative changes would be to allow DPOs that are registered under Subdivision D to include the prescribed information from subsection 177(1.1) into their agreements with sellers and have those agreements be accepted without the requirement of an electronic signature. Click-through agreements between DPOs and sellers are the industry standard and form the basis of the legal relationship between the two parties.

Pursuant to RITS 104816, the CRA does allow taxpayers registered under Subdivision D to include the prescribed information from subsection 177(1.1) in a form other than GST506, however, the ruling still requires electronic signatures. Requiring electronic signatures is difficult to scale for DPOs, particularly for those that have a high volume of sellers. The ability to imbed the certifications into part of a click-through acceptance agreement would be more reflective of how sellers and DPOs operate in practice. This approach would allow DPOs the ability to collect and remit GST/HST on all supplies made through the digital platform, should they so choose. This would not only reduce the administrative burden for DPOs, but also for the CRA, particularly as it relates to audits of DPOs.

Question for CRA

TEI requests the CRA permit prescribed information from subsection 177(1.1) to be agreed to by form of click-through acceptance and remove the requirement for electronic signature.

12. Sales of intangible personal property by non-resident persons registered under Subdivision D of the *Excise Tax Act* (Canada), to non-resident, non-registrant recipients
[Companion question also raised to Finance]

Supplies of intangible personal property ("IPP") to non-resident, non-registrant recipients are zero-rated provided the conditions outlined in section 10.1 of Part V of Schedule VI of the *Excise Tax Act* (Canada) ("10.1") are met.

Pursuant to GST/HST Memorandum 4.5.3, suppliers are required to collect, verify, and maintain evidence to support the zero-rating in 10.1 such as:

1. Online self-declaration by non-resident recipients that they are not registered for GST/HST under Division V.
2. Online self-declaration by recipients that they are non-residents of Canada along with comparing the declaration to a complete home address and the billing address or address of financial institution attached to credit card; or geo-location software
3. Verification that the purchaser is not in Canada at the time of purchase by the use of geo-location software.

As there is no distinction between non-resident suppliers and resident suppliers, these zero-rating evidence requirements equally apply to non-resident suppliers who are registered under Subdivision D of Division V and supply IPP to customers globally, including those in Canada.

Consider the following example:

1. A non-resident supplier who resides outside Canada supplies digital content to customers around the world.
2. The digital content is IPP (that is not intellectual property) and includes world-wide rights (including Canada)
3. Customers in Canada are able purchase and access the digital content.
4. The digital content is for non-commercial use.
5. Given the nature of these supplies of digital content and the manner in which the global economy operates today, the supplier may have many millions of customers throughout the world purchasing this content each year, or even each month.
6. Under the simplified GST regime (Subdivision E of Division II), the supplier needs only to consider application of GST/HST to customers who are determined to be located in Canada, pursuant to the applicable rules under Subdivision E.
7. Under the standard regime (Subdivision D of Division V), however, the non-resident supplier would be required to ask every customer worldwide to declare that they are not registered for GST/HST under Division D; that they are non-residents of Canada; and conduct the address and location verification checks or risk a large assessment by the CRA, otherwise the supplier would be required to charge GST/HST.

The impracticality of the evidentiary requirements needed to support the zero-rating conditions of 10.1 does not align with the reality of global e-commerce today. As a result, the evidence CRA requires to support zero-rating of 10.1 at minimum disincentivizes, and more realistically, is a barrier to non-resident suppliers who may want to expand operations to Canada. It may also result in non-resident suppliers blocking persons in Canada from purchasing or accessing content. The administrative burden created by the requirement to have online declarations is also problematic for resident suppliers IPP and may also be a barrier to resident suppliers offering their supplies of IPP to customers located outside of Canada.

While TEI understands the CRA's ability to act is limited without legislative changes, the CRA can, however, consider changing its policy with respect to the evidence it requires to support the conditions of zero-rating to better reflect the modern reality of global e-commerce. TEI also understands that CRA auditors have accepted that a supply of IPP by a non-resident registrant to a recipient that is also outside Canada is zero-rated and have not required proof of self-declarations. This approach, however, is considered on a case-by-case basis only and offers no certainty to suppliers who are impacted.

Questions for CRA

(a) On the basis of the above, TEI requests CRA update Memorandum 4.5.3 and include additional indicators it considers acceptable to support the zero-rating under 10.1 and not simply require self-declarations. Specifically, TEI encourages CRA to consider relevant conditions in Terms & Conditions agreed to between suppliers and recipients to support zero-rating, such as Terms that prohibit the use of the digital content for any commercial purposes as an acceptable indicator that recipient is not registered for GST/HST.

(b) TEI also urges the CRA to permit suppliers to determine residency and location of purchase using address information or geo-location software and not to additionally require self-declarations for residency determination purposes.

13. Introduction of acceptable error rates thresholds for determining assessments on CRA audits of product sales

Many TEI members have business operations that include high volume sales of thousands, or even millions, of different products. For a variety of reasons, having a 0% error rate for taxes collected on sales of these products is simply not possible. Some of these reasons include the fact that retailers (suppliers) are often reliant on other parties, such as third-party vendors, distributors, or manufacturers to provide accurate information about their products to help the retailer determine how taxes apply on the retailer's sale of the products to customers. At the same time, rules around how GST/HST apply to basic groceries, health products, etc. are complex and require deep diving into memoranda and rulings to ensure accuracy. It is simply not possible to undertake a thorough review of each and every product listed and search all applicable Canada Revenue Agency published guidance and rulings that may apply; even completing such an undertaking does not guarantee 100% accuracy with CRA's interpretation of the legislation.

This case is particularly true for retailers that are also digital platform operators ("DPOs") and have taken on considerable audit risk as a result of being deemed to be the supplier under Subdivision E of Division II of the *Excise Tax Act* (Canada) ("ETA"). Although paragraphs 211.23(2)(c) and 211.13(5)(c) of the ETA offers some protection for DPOs who rely in good faith on information provided by third parties to determine the taxability of a particular good, it is not clear how such paragraphs will be interpreted in practice and it will be difficult to rely on such paragraphs in the course of an audit, particularly where an audit sample could include millions of different transactions from a similar number of third-party sellers. It is clear more measures are needed.

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Many TEI members have robust processes and internal controls and dedicate significant effort to ensure taxes are collected on their sales in accordance with the ETA and other relevant statutes. In such cases, despite selling thousands or millions of different products, error rates found by CRA auditors are a very small percentage of sales made by the supplier or deemed supplier. While suppliers are able to go back to recipients to collect GST/HST as a result of an audit assessment, retailers (suppliers) or DPOs (deemed suppliers) who make sales to consumers are generally not able to take advantage of this ability to offset assessments of GST/HST on product sales.

Question for CRA

TEI requests the CRA adopt an innovative, modern approach to audits that recognizes 100% accuracy is simply not possible and introduces reasonability thresholds for error rates within acceptable tolerances for suppliers and deemed suppliers who can demonstrate the instance of strong internal controls.

There are several mechanisms that could be used to achieve this goal. One example would be to introduce tiered tolerance thresholds that offer relief that is commensurate to the number of different products sold by a particular supplier or deemed supplier. For example, a supplier or deemed supplier who sells greater than ten million products, may be afforded a higher error rate (i.e. 2.0%) than a retailer who sells fewer than ten thousand different products (e.g. 0.2%). Should a supplier or deemed supplier demonstrate that they have proper internal controls and produce an error rate equal to or under the error rate tolerance based on the number of different products sold (e.g. error rate of less 1% or less), the supplier or deemed supplier should be afforded some relief of any assessment with respect to incorrect taxability on such product sales.

Alternatively, the CRA could consider allowing a certain fixed percentage of relief to offset any assessments of GST/HST on sales such as a supplier or deemed supplier not being liable for [X%] of the amount GST/HST that the supplier or deemed supplier fails to collect or inaccurately collects on sales. However, in no event shall the error percentage in and of itself allow the supplier or deemed supplier a refund of GST/HST on such sales.

TEI would welcome the opportunity to work with the CRA to develop a fair and reasonable framework that reflects not only best practices of the aforementioned approaches seen globally, but also the nature of commerce and sales in modern society. Adopting such an approach also promotes the establishment and enhancement of internal controls around product tax determination by suppliers and deemed suppliers. Working co-operatively with the CRA, TEI would seek to minimize any fiscal impact by helping to establish clear guidelines and defined criteria that can be understood by suppliers and deemed suppliers and applied by auditors, allowing CRA to focus time and resources on more high-risk areas prone to evasion activities.

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14. Improvements to the CRA's GST/HST Registry search
[Companion question also raised to Finance]

TEI, along with other representative bodies, has for many years been requesting improvements be made to the Canada Revenue Agency's GST/HST Registry search (the "Registry") to make the tool more usable and fit for purpose. These requests have included (1) changes to allow for the use of Application Programming Interface ("API") so that GST/HST numbers can be validated simply by searching by the GST/HST number provided; (2) that the Registry does not return a valid result if the GST/HST number entered is tied to a GST/HST registration under Subdivision E; and (3) the API allow for bulk searches.

At the time of TEI's last request on this matter in 2022, the Department of Finance communicated that this issue was the domain of the CRA. However, when presented with the same request, the CRA responded that it was unable to make such changes due to the privacy or confidentiality provision of the *Excise Tax Act* (Canada).

Questions for CRA

(a) Has CRA sought an opinion from the Department of Justice whether requested amendments by TEI and other stakeholders across Canada would infringe the privacy or confidentiality provisions of the ETA? If not, would the CRA commit to seeking an opinion from the Department of Justice, whether the disclosure of a particular GST/HST registrant's name and registration status on a specific date, would result in the contravention of the confidentiality provisions of the ETA?

(b) Where such disclosure of GST/HST number and registration status infringes on the confidentiality provisions of the ETA, TEI requests CRA and the Department of Finance to jointly make any required legislative and administrative amendments to create a more usable GST/HST Registry search tool similar to what is commonplace and standard throughout many other VAT jurisdictions, including Québec, with the objective of meeting government's goal of tax compliance (i.e. fraud prevention on collection of GST/HST, detecting carousel schemes, etc.).

15. Audit Discussion

Questions for CRA

(a) Can the Canada Revenue Agency provide comments on the top 5 areas of interest that the Audit Division has come across and/or identified that lead to longer audit times?

(b) In addition, could the CRA provide suggestions to TEI members to increase the efficiency of such audit work.

16. Duty Refunds for Re-working or Destroying Cannabis

Under section 158.16 of the *Excise Act, 2001* (Canada), a cannabis licensee may only re-work or destroy a cannabis product in the manner authorized by the Minister. Further, when applying for a refund under section 187.1, the Minister will only refund to the duty paid on a cannabis product that is re-worked or destroyed if it is done so in accordance with section 158.16 and applied for within two years from the date of destruction.

Certain provincial boards (i.e. customers) suggest that the provincial board be responsible for destroying cannabis products as it is cheaper for the provincial board to destroy the products on site rather than have them shipped back to the supplier. However, this eliminates the ability to apply for a refund under 187.1 of the *Excise Act, 2001* (Canada).

Question for CRA

Would the CRA approve a method that involves destruction of the cannabis product by a provincial board provided it was pre-approved and notified of the destruction beforehand?

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17. Audit Timelines

TEI members seek clarity on the expected timelines in current GST/HST audits. Recent communications have been that responses to audit inquiries are required within 15 days, and an additional 15 days could be granted upon request.

Questions for CRA

TEI members would like to better understand the Canada Revenue Agency's policy with respect to the following:

(a) Accounting and related data requests by the Computer Audit Specialist: Is there a general deadline for these requests? The CRA often requests tables from SAP and other software that are generally not accessible to an organization's tax department. TEI members often require a number of months to gather this data in the formats requested by CRA.

(b) GST/HST auditor's initial request for sales or purchase related documents. Is there a standard deadline to provide this documentation? An audit sample referencing hundreds of transactions is not uncommon, and the requests could come at a time when registrants have competing priorities that coincide with the audit timing and these documents often need to be provided by other departments in the organization. In the past, members have generally found CRA to be reasonable with the expected timeframes to respond. Can we continue to expect the same approach in the future?

(c) GST/HST auditor's subsequent requests for sales or purchase related documents. As described above, depending on the number of documents being requested in the additional samples, and who in the organization will need to supply such documents, 15 days is not sufficient.

18. Vision and Priorities for the CRA's GST/HST and Digital Compliance Directorate

Question for CRA

We invite the Director General of the GST/HST and Digital Compliance Directorate at the Canada Revenue Agency to outline the CRA's priorities for the next 12 months, the vision for the future of the branch and engage in discussion with TEI on how TEI can continue to provide feedback to and engage with CRA to achieve this vision.

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19. Pre-Approval of Input Tax Credit (ITC) Methodologies

TEI members have shared with the Canada Revenue Agency the industry's experiences with the administration of the current Pre-Approval Process and have proposed balanced solutions that would benefit all parties by reducing compliance, administration and collection costs while increasing certainty and efficiency.

The rationale behind the Preapproval Process was to streamline the application of the ITC rules for financial institutions and to provide certain direction regarding the different ITC allocation methods that can be used.[1] These rules were intended to provide compliance ease with respect to the GST/HST filings and minimize issues at time of audit of preapproved years.

It has been the industry's experience that the compliance burden on the financial institutions has increased since the introduction of these rules, disproportionate to the actual tax involved and leading to uncertainty for the industry as a whole. As a result, the current renewal process is no longer about the approval of a methodology, rather it has become an audit of the ITCs that can be claimed as a result of the methodology. Specifically, under the current process there has been:

- A lack of recognition of consistent allocation methodologies or business structure (operations);
- An escalation in the level of detail and supporting documentation requested prior to granting preapproval,
- The Preapproval Process has become a pre-audit; and
- An overlap in timing between the Preapproval Process and other GST/HST compliance obligations.

[1] New Release and Backgrounder - Canada's New Government Unveils Proposed Improvements to the Application of the GST/HST to the Financial Services Sector, January 26, 2007 (http://www.fin.gc.ca/n07/data/07-006_1-eng.asp)

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To manage the burden of compliance as well as reduce the level of uncertainty on the financial services sector, below are a few recommendations to improve the current Pre-Approval Process:

- Establish clearer guidelines to evaluate the particular methods: A particular method should be "fair and reasonable". "Fair and reasonable" is an umbrella term covering a number of requirements. However, particular methods should reflect the "use or intended use" of the tax bearing goods and services; be able to react to future business changes; and be relatively simple to operate and audit. The CRA should not be permitted to preemptively determine that a taxpayer is not entitled to any ITCs in respect of such inputs by characterizing such a determination as an allocation methodology issue.

- Establish guidelines to evaluate the particular methods: Guidelines should be introduced to allow for more flexibility to collaborate and suggest modifications. The rules permit modifications and the CRA should suggest the modifications within established guidelines.

- Written communication with respect to decisions on particular methods should provide greater clarity to improve internal business processes: Providing written communication identifying the reasons as to why a particular method that is proposed by the taxpayer is not "fair and reasonable" or why a previously approved particular method is being questioned would be a valuable source of reference when assessing the appropriate modifications to reporting systems and future work efforts. This written communication would help drive improved productivity and efficiency for all parties.

- Establishment of a central review area to ensure consistent application of rules and to develop procedures for resolving disputes: Central oversight to address disagreements that arise during the Preapproval Process would ensure more timely resolutions and allow stakeholders to optimize resources more appropriately. One option to consider is the use of the Appeals Directorate or the GST/HST Rulings Directorate in Ottawa where the views of the industry and CRA could be presented.

- Maintain the Preapproval Process at a higher level that focuses on the overarching principles and overall method: Increase the efficiency of the Preapproval Process by limiting the review to be centered on overarching principles and an overall method rather than delving into granular details of the ITC entitlements the particular method would generate. For example, details on which tax amounts get allocated to specific divisions or whether tax amounts should fall into a bucket of an exclusive input or direct input is a question of audit and should have no impact on whether a methodology is "fair

and reasonable". In order to facilitate the review process, taxpayers could provide a written description rather than the MS Excel version of the last return, so that the written description is approved rather than the MS Excel worksheet calculations.

- The Preapproval Process and the audit of a taxpayer should not be performed by the same auditors: Assigning different teams will prevent the Preapproval Process continuing to be a pre-audit of the ITC allocation methodology for the future financial year.

- Waive the annual requirement to file an application to use a pre-approved method where there are no changes from a method used in the prior year: Alternatively, consideration could be given to authorizing the use of a pre-approved method for three to five years with the condition that the reapplication for use of a pre-approved method for a particular fiscal year would arise where there is a material change in the business structure that would impact the ITC methodology. This proposed solution may need to be discussed with the Department of Finance.

Question for CRA

Would the CRA consider incorporating any of recommendations previously discussed and shared with the CRA by members of the financial services sector.

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20. Follow up on 2023 Q10. CRA My Business Account and Represent a Client Services Use for Authorizations

In response to Q10 at the 2023 liaison meetings regarding challenges that TEI members have regarding authorizations and access, the Canada Revenue Agency indicated that it is exploring other methods for taxpayers to submit information and would be in a position to provide an update. Since the 2023 meeting, TEI members continue to struggle with these areas.

Question for CRA

Could the CRA provide an update on any enhancements in this respect and if there are any particular areas of additional input and feedback TEI can provide to facilitate improvements to authorizations and access? We repeat the question below for convenience:

> **10. CRA My Business Account and Represent a Client Services Use for Authorizations**
>
> Similar issues have been raised in prior year's Liaison meetings. The new procedures to set up online access with the Canada Revenue Agency for new entities or newly acquired entities are causing increased frustration for TEI members. The processes are often not practical for large corporations and make it extremely difficult/burdensome to get CRA online access given directors of corporations are not involved in the tax functions of corporations. In addition, the short time limit set for a director to access the online approval to give authorization can expire before authorization is provided.
>
> In some cases, taxpayers have provided a list of officers of the corporation along with a valid power of attorney for the VP tax along with corporation documents. However, TEI members have found it can often take several weeks to a month to get these documents processed by CRA before the VP Tax is provided access to further provide someone else with Level 3 access.
>
> **Question for CRA:**
>
> TEI understands the needs to protect taxpayer information and ensure only properly authorized persons are granted access; however, TEI members propose CRA consider setting up a special business online portal where large businesses could submit the required corporate information for streamlined review rather than faxing the information into the Tax Centre. TEI would not envision this particular online portal as requiring authorization to submit initial corporation documents. TEI would appreciate a status update from CRA.

[NOTE to CRA. Below are the follow up questions from the 2023 liaison questions that are still outstanding.]

21. Follow up on 2023 Q8 – GST/HST Objection Timelines and New Audits on Same Issues

While there was a general discussion at the 2023 TEI liaison meetings on this question around GST/HST Objection Timelines and New Audits on the Same Issues, TEI is still awaiting a response to this question.

Question for CRA

Could CRA provide a response. We repeat the question below for convenience:

> **Q8. GST/HST Objection Timelines and New Audits on Same Issues**
> CRA's website states that it may take over 500 days on average to resolve high complexity GST/HST objections. TEI members are aware of objections taking over 1,000 or even 1,500 days before getting resolved, meaning that a new CRA GST/HST audit often starts without the objection related to the previous GST/HST audit having been resolved.
>
> **Questions for CRA:**
> What does the CRA consider as a reasonable delay to resolve a high complexity objection? When a new audit starts while an objection related to the previous audit is still unresolved, is there a way for the CRA to prioritize this file and expedite the process so that the taxpayer (and the CRA auditor) can have some clarity regarding the issues which were included in the objection? Can CRA share some statistics regarding the delays to resolve high complexity objections (number of files currently being handled by CRA, minimum and maximum delays, etc.)?

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22. Follow up on 2023 Q9 – Proactive Communications Request for My Business Account Issues

In response to Q9 at the 2023 liaison meetings regarding TEI's request for proactive communications to technical issues impacting My Business Account, the Canada Revenue Agency mentioned it would review protocols for advising stakeholders on major issues to see if further information can be provided.

Question for CRA

Could CRA provide an update on the review of such protocols and if there any particular areas of additional input and feedback TEI can provide to facilitate this review?

23. Follow up on 2023 Q13 – Collections Resulting from Desk Audits of Joint Filing Registrants under Subsection 228(7)

While there was a general discussion at the 2023 TEI liaison meetings on this question around collection action caused by desk audits of joint filing registrants, TEI is still awaiting a response to this question.

Question for CRA

Could the Canada Revenue Agency provide a response. We repeat the question below for convenience:

> **Q.13 Collections Resulting from Desk Audit of Joint Filing Registrants under Subsection 228(7)**
>
> Subsection 228(7) of the *Excise Tax Act* (Canada) allows closely related corporations, that meet the prescribed circumstances and conditions in the *Offset of Taxes (GST/HST) Regulations,* to elect for net tax payable of one corporate registrant to be reduced or offset against a net tax refund of a related corporate registrant within the same closely related group.
>
> Despite a 228(7) election in place, some members have found that the Canada Revenue Agency will treat net tax payable that was net against a net tax refund to be short paid and send to collections when the GST/HST return for the net tax refund is under desk audit. The result is interest levied against the amount of net tax payable that was offset against the net tax refund despite s. 228(7) and collection action taken for the balance.

Question for CRA:

As neither s. 228(7) nor the *Offset of Taxes (GST/HST) Regulations* support treating the amount offset against the net tax refund as unpaid when under audit, could the Canada Revenue Agency consider changing its practice and only consider an amount offset unpaid if the net tax refund or a portion thereof is denied?

24. Follow up on 2023 Q19 Request for information s. 288 and s. 231.1

At the 2023 liaison meeting, the Canada Revenue Agency and TEI had a very productive discussion surrounding mechanisms for registrants to respond to requests for information ("RFI") electronically. Subsequent to the 2023 liaison meetings, TEI provided additional comments on the workability of the various mechanisms raised by the CRA. Since that time, TEI members have continued to experience interactions with auditors which do not reflect the expected engagement and mechanisms as described by the CRA in the 2023 response to this question. TEI appreciates CRA willingness to engage on this topic to find mechanisms that ease compliance with RFIs, particularly for registrants that may receive significant volumes for RFIs.

Question for CRA

Given the productive conversations to date, would the CRA be willing to create a working group with TEI and any other interested stakeholders on this issue?