TAX EXECUTIVES INSTITUTE, INC. INCOME TAX QUESTIONS

Submitted to the CANADA REVENUE AGENCY

DECEMBER 5, 2023

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 during the December 5, 2023, liaison meeting. If you have any questions about the agenda in advance of the meeting, please do not hesitate to call Mark Caluori, TEI's Vice President for Canadian Affairs, at 604.806.3185, or Steve Saunders, Chair of TEI's Canadian Income Tax Committee, at 403.801.4657.

A. Introduction

Question 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 initiate a discussion regarding the CRA'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:

In 2023, the International and Large Business Directorate (ILBD) has focused on adapting our work environment and audit techniques to the new hybrid work environment that has been mandated across the Canada Revenue Agency. As the CRA continues to evolve in its hybrid approach to audits, we are focusing on emerging tools and training procedures to support performance of our audit programs. We are confident that we will reach the appropriate combination of in-person, on-site versus remote audit activities. The CRA welcomes TEI perspectives regarding in-person and virtual auditing.

ILBD's workload has expanded in the last few years, so we will be structuring our work to meet these new commitments and will continue to find the best way forward.

We have several emerging files (such as the Mandatory Disclosure Reporting Rules) that are building momentum as part of the most recent budget announcements. We are refining how these programs will be delivered and we will be keeping our stakeholders informed as these programs continue to take shape.

ILBD's four main priorities remain as follows:

- Build and maintain technical capacity
- Enhance our risk assessment capabilities
- Ensure that our cases meet the required standards for audit quality
- Reduce audit and file resolution timelines

To expand further on these priorities and how we plan to meet them, what I'd like to speak to more specifically is how we move our work forward.

- Using technology to enhance our internal systems to achieve our objectives, particularly around audit quality and cycle time.
- Continue to leverage data to refine risk assessment and audit file selection.
- Investing in training, staffing, succession planning and retention.
- Balancing core mandate/resources with new initiatives/emerging priorities.

Over the next few months, I'll be taking the time to evolve these ideas with our management team and bring them to tangible action. We will be building on the great work and strong foundation that already exists in ILBD to set our course for the future.

B. Audit/Appeal Matters

Question 1. General Anti-Avoidance Rule

a. CRA Process for Assessing GAAR

On August 4, 2023, the Department of Finance released its latest proposals (the "GAAR Proposals") to amend the general anti-avoidance rule ("GAAR"), including the introduction of a 25% penalty if a transaction is found to be subject to the GAAR. TEI is alarmed about the potential for an overly broad application of this penalty by the CRA, particularly given that large corporate taxpayers appear to be routinely reassessed under GAAR as a secondary position. In a submission to Finance dated May 31, 2023, TEI recommended the following changes to the CRA's administrative practices regarding GAAR:

> The imposition of a GAAR penalty – indeed, any changes to the GAAR – should be accompanied by significant changes to the CRA's administrative practices vis-à-vis GAAR reassessments. As others have noted, the analysis of the GAAR committee would benefit greatly from receiving viva-voce representations from taxpayers (or their representatives). This would be true even in the absence of a GAAR penalty but becomes significantly more important in light of the increased stakes arising from the imposition of a GAAR penalty.
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> If the Government intends to penalize taxpayers, it should ensure that the process for imposing such penalties include more safeguards and provides taxpayers with an opportunity to put their best foot forward to the GAAR committee.
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> Similarly, the imposition of any penalty should be determined by a committee (or perhaps the GAAR committee) rather than by specific audit teams, to ensure that penalties are only imposed in appropriate circumstances and in a consistent and uniform manner. We understand that CRA is proposing to adopt such a practice with respect to penalties under the Mandatory Reporting Rules and would encourage the CRA to adopt a similar practice with respect to any GAAR penalties. Again, such a committee should seek viva voce representations from taxpayers (or their representatives).

Could the CRA comment on TEI's recommendations above? In particular:

1. How does the CRA intend to ensure that a reassessment under the GAAR, either as a primary or secondary position, is based on a careful consideration of the object, spirit, and purpose of the provisions at issue, and, with respect to secondary GAAR assessing positions, is not simply added to a reassessment as a backstop position?
2. Given the punitive nature of the 25% penalty if the GAAR applies, TEI believes it is very important that the GAAR Committee understand the taxpayer's position. This can only occur if the taxpayer is permitted to make its own representations to the GAAR Committee (as opposed to the GAAR Committee relying on a CRA auditor's interpretation of the taxpayer's position). Will the CRA allow taxpayers to make viva voce as well as written representations to the GAAR Committee?
3. Will the imposition of the 25% penalty be dealt with by the GAAR Committee, and will it be a similar process to that envisaged for penalties under the Mandatory Reporting Rules? How will the CRA ensure there is transparency for taxpayers in the penalty process?
4. Is it the CRA's intention to assess the penalty when the GAAR is a secondary and not the primary assessing position?

CRA Response:

In all circumstances, HQ is involved before any reassessment is issued involving the application of the GAAR. The CRA has informed the public and tax practitioners community of this on numerous occasions in the past, including and most recently Chapters 13 and 14 of the CTF 2021 publication "The General Anti-Avoidance Rule – Past, Present, and Future and the 2019 CTF special conference "The General Anti-Avoidance Rule: Past and Future (Cause for Celebration or Regret?)".

The assessments under GAAR follow a rigorous process intended to ensure quality and consistency of the application of GAAR in an equitable manner. In general, any proposed GAAR assessment that is sent to HQ by the TSO for review will be referred to the Committee, unless the issue is similar to one previously considered by the Committee. Accordingly, the Committee or HQ, depending on the circumstances, will provide a recommendation on whether the GAAR should be applied in a particular situation.

The referral contains a GAAR analysis based on the Supreme Court of Canada's guidelines. When the application of the GAAR is considered, taxpayers' representations are given careful consideration. Any submissions received from the taxpayer or the taxpayer's representatives are required to be forwarded in their entirety to headquarters and—where applicable—to the committee.

The GAAR Committee is an ad-hoc advisory board for quality control and is not a quasi-judiciary forum. Taxpayers are thus not allowed to participate in the GAAR Committee's meetings, because their line of communication with CRA auditors should be preserved and not be upended by the GAAR Committee.

We would like to stress that the August 2023 Budget measures on GAAR have not yet been enacted. The imposition of the penalties under subsection 245(5.1) and the application of the exceptions provided in proposed subsection 245(5.2) are under the purview of CRA's Audit.

b. CRA Statements on Acceptable Transactions from a GAAR Perspective

The GAAR Proposals also include the following:

- Expanding the rule to cover an "avoidance transaction" where obtaining a tax benefit is one of the main purposes, rather than requiring it to be the primary purpose.
- The introduction of an "economic substance" test at the misuse or abuse stage, such that where an avoidance transaction significantly lacks economic substance, the transaction is presumed to result in a misuse or abuse of the provisions of the Act.

There have been long-standing public statements made by the CRA and Department of Finance providing comfort with respect to routine tax planning strategies that could potentially be viewed as "avoidance transactions." For example, the Department of Finance indicates in the Explanatory Notes to the GAAR Proposals that loss consolidation transactions in related groups

would generally continue to be acceptable. In light of the proposed codification of the "due diligence defense" in protecting against the 25% GAAR penalty, could the CRA advise if their views have changed with respect to any previously accepted tax planning strategies?

CRA Response:

The Canada Revenue Agency is unable to provide a response to question B1(b) as the proposed legislation has not yet been enacted. CRA will be able to provide comments once the proposed legislation is enacted.

Question 2. TSO Resources

Historically, the majority of the CRA's workforce has been employed throughout various regions of the country to deliver the agency's programs via local taxpayer service offices ("TSO") and regional tax centres. TSOs have been tasked to handle low volume, high complexity files that may require in-depth review. In the CRA's 2022-23 Departmental Plan, the Agency committed to being agile as it explores, experiments, and innovates with the hybrid model of work, including the launch of a new directive on Virtual Work Arrangements and an update to its Workplace of the Future implementation plan. Given these initiatives, it is TEI's understanding that many positions within the headquarter branches of the CRA are now filled remotely with internal resources that were previously employed at the various TSOs throughout the country. TEI is interested in what impact this hiring trend is having on the TSOs and the programs they deliver. In particular, impact on:

1. The CRA budget allocation to the TSOs to hire and train staff;
2. The replacement/maintenance of staff at the TSOs;
3. The overall level of quality/expertise of staff at the TSOs;
4. The ability of the TSOs to deliver the CRA's programs; and,
5. The provision of security safeguards to ensure protection of taxpayer information.

In addition, can the CRA comment on its role and initiatives on the fight against cyber fraud, including collaborating with other Canadian law enforcement agencies or foreign tax authorities?

CRA response providing comments on strategies and training to further the skillsets of both new and experienced auditors, transferring knowledge from experienced auditors and maintaining and increasing technical capacity and industry knowledge of the auditors:

The CRA, like most employers, is facing a future shaped by a changing workforce and economic landscape which has forced us to evaluate our approach to maintaining and improving the technical and auditing knowledge of both current and future employees of the CRA.

The CRA prides itself on a longstanding commitment to maintaining and continuously developing a strong technical capacity. The Compliance Programs Branch (CPB) offers robust onboarding development programs aimed at training auditors through continually refined learning paths, on-the-job support tools, coaching, and courseware that improve our auditors' performance and technical capacity. Our focus is a "learning in the flow of work" approach, which integrates learning into the job with the support of more experienced auditors and technical experts.

Some examples of ILBD's efforts to promote learning in the audit and technical areas include the following:

- Hired a full time learning architect to develop and implement a learning strategy to aid in capturing the knowledge of our most experienced auditors in the field and Headquarters.
- Work closely with our field subject matter experts to build national learning that is consistent across the country.
- Bringing back recently retired employees to both the region and headquarters who provide both direct technical support and general audit guidance to auditors in the field.
- Reviewing all of our courseware to ensure that it's in line with modern learning methodologies and technologies.
- Strategically reviewing existing communiqués, job aids, and audit manuals.

The ability to work virtually has allowed us to more easily tap into experience available across the country. The CRA has a great deal of knowledge available in the regions and leveraging this audit expertise and industry-specific knowledge at a national level to provide training and knowledge transfer to all audit staff is an important part of working toward our goal of ensuring ILBD's technical capacity as newer auditors develop. Though these auditors are often physically located in the regions, they report to our national headquarters, and provide advice and guidance to the entire audit community, both regionally and nationally.

CRA response and comments on the provision of security safeguards to ensure protection of taxpayer information, as well as initiatives related to fighting cyber fraud, including collaboration with other Canadian law enforcement agencies or foreign tax authorities.

1. The CRA's role and initiatives on the fight against cyber fraud.

- The CRA, like every other government and private sector organization in the world, faces ongoing and persistent cyber threats. Cyber attacks, phishing attempts and data breaches are becoming commonplace, and increasingly more complex. It's not just about government departments or financial institutions anymore, but also about the interconnections across multiple jurisdictions and sectors. A breach of personal information in the private sector, as an example, can fuel identity theft and fraud activities that target government infrastructure.

- The CRA's risk environment in particular has amplified significantly since the pandemic, given our role in administering pandemic related benefits. However, we've always been a major target given our information holdings. Over 92% of Canadians participate in the tax system, which means that the CRA has an enormous collection of sensitive information on almost every individual in Canada, as it files over 32 million returns. In addition, CRA files sensitive information on corporations, trusts, charities and other organization. Every day we handle an incredible volume of interactions: 46 million log-ins to "My Account" during the 2021 tax filing season, and our call centres received 49 million calls that fiscal year.

- The CRA must continually pursue new ways of thinking and new innovative strategies to combat evolving cyber threats. Afterall, the confidence and trust that individuals and businesses have in the CRA is a cornerstone of Canada's voluntary tax system.

- Since the pandemic, the CRA has rolled out a number of important initiatives to combat cyber fraud.

    - CRA established a dedicated Identity Protection Services program to provide a single point of contact for individual taxpayers to resolve identity theft concerns regarding their CRA accounts. Identity Protection Services reviews all cases of alleged identity theft or potential identity schemes, contacts potential victims, and protects and restores accounts that could be compromised.

    - CRA implemented "Multi-factor authentication" as a mandatory enhanced security measures for all individuals, businesses, and representatives who access the CRA's sign in services.

    - CRA implemented the "Confirm my Representative" process. This allows individuals, business owners, and trustees to easily and securely control who has access and what level of access their representative has to their personal and tax information.

- All “My Account” users are required to have an email address on file, which allows the CRA to send them an email notification whenever important information in their account is changed, such as their mailing address or direct deposit information.

- CRA strengthened the registration process for representatives, who must now provide additional personal information and enter a security code prior to accessing “Represent a Client” and its services.

- The CRA is continually balancing security with service and asking ourselves what is the appropriate amount of friction, and when should it be applied, to facilitate legitimate activity while protecting taxpayers and preventing those who are looking to take advantage.

- From an organizational perspective, the CRA has also undergone quite significant changes during this timeframe.

- The CRA has restructured its Security portfolio. In particular the CRA has now brought all security functions under one governance structure, for greater visibility, collaboration and centralized accountability. The Chief Security Officer role was also elevated to the Assistant Deputy Minister level, providing centralized strategic leadership, coordination, and oversight on all of the CRA’s security obligations.

- The CRA has also invested into new, innovative and leading security practices.

- We’ve invested in external fraud risk management teams that are responsible for proactively monitoring, detecting, analyzing, and informing stakeholders on the safeguarding and mitigation of external fraud-related risk. The external fraud risk management teams are leveraging innovative tools, methods and techniques to understand, anticipate and manage associated risks.
  - One example is red teaming, we have security experts who pretend they are fraudsters and try to break our processes and controls, so we can identify and correct vulnerabilities. A recent example: this exercise was done for the launch of the Canada Dental Benefit program, and resulted in adjustments prior to launch.

- Additionally, the CRA established a dedicated account security program to manage complex account security issues. This program is composed of dedicated teams who:
  - Protect taxpayer’s accounts that have been compromised or are at risk of being compromised by external third parties;
  - Resolve complex account security problems that are horizontal in nature;
  - Discuss and address vulnerability patterns and trends; and
  - Identify opportunities to strengthen CRA’s account security posture.

- Finally, from an operational perspective, the CRA continues to perform a number of functions to uphold our cyber security posture.

  - The CRA follows Government of Canada cybersecurity guidance, and policies set by the Canadian Centre for Cyber Security and Treasury Board of Canada Secretariat to prevent cyber threats.

- The CRA has systems and tools to monitor, detect, investigate and neutralize real or potential threats.

- The CRA regularly performs security assessments, such as vulnerability scanning, penetration testing and security risk assessments on CRA's online services. The CRA also has a dedicated team to simulate a potential attacker's actions and possible motivations, across CRA and Shared Services Canada Information Technology systems.

- In addition, the CRA takes an enterprise approach to security to ensure consistent, reliable and secure operations. Change and configuration management, and patch management process ensure our systems are resilient and are capable of protecting the information within them.

2. Collaborating with other Canadian law enforcement agencies or foreign tax authorities

- One of our guiding principles is that fraud cannot be managed in isolation of the larger context and collaboration is an essential part of upholding our security posture. We maintain partnerships with a number of different partners such as with Financial intuitions, provinces & territories, other federal organizations, law enforcement and our international counterparts.

- For instance, the CRA meets regularly with other government departments, including ESDC, SSC, and TBS to discuss privacy, security and incident coordination.

- We have regular meetings with the RCMP's Canadian Anti-Fraud Center (CAFC) where we exchange information on new schemes, trends, security concerns and security reports.

- The CRA is also part of the Joint Chiefs of Global Tax Enforcement (J5). The J5 is comprised of the Australian, Canadian, Netherlands, UK and US tax administrations. Although the main scope of the J5 is international tax evasion, cyber threats are also discussed.

  - In particular, a J5 working group is looking into Digital ID/ ID proofing and how to improve it.

- We also have a seat on the International Public Sector Fraud Forum. This is a another special working group compromised of government representatives from the Five Eyes (Australia, Canada, New Zealand, the United Kingdom, and the United States) and we meet regularly to share leading practices in fraud management and controls across the public sector.

Given the high degree of personal information that has been exposed and breached over the last decade and the on-going level of breaches we see at public and private sector organizations - it is safe to say that the CRA's threat environment will remain high for the foreseeable future. Managing cyber fraud is a whole of effort approach. To stay ahead the CRA will continue to focus on the following:

- **Collaboration and Intelligence sharing**: We operate in an extremely dynamic environment, with bad actors experimenting with new tools and tactics. Sharing intelligence and looking at our threat, vulnerability, and control environment more holistically with our partners, will lead to optimized controls and effective processes and incident response strategies.

- **Innovative solutions**: An ounce of prevention is worth a pound of cure. Leveraging each other's intelligence through activities like fraud simulations and other innovative strategies will enable us to better understand our threat and vulnerability environment and encourage a more proactive stance.

- **Security by design**: Driving the culture of integrating security considerations into every CRA program, initiative, system, third party arrangements and service right from the start.

Question 3. Discussion of CRA Approach to Issuance of Audit Queries and Proposal Letters

TEI members have noticed that, over the past couple of years, the number and breadth of audit queries has significantly increased. This could be because:

- Audits are now performed remotely, with less interaction between taxpayers and audit teams. This means fewer opportunities to answer questions in real-time, or to communicate relevant facts before erroneous or incomplete conclusions are reached.
- The number of audit teams involved with each taxpayer has also increased. Domestic, transfer pricing, international, and abusive tax avoidance teams all issue audit queries in a single year, often asking for duplicative information. In fact, there is often a request to "include all information even if already submitted."

We have also noticed a change in the content of Proposal Letters, both in terms of their statement and reliance on factual information and their level of technical analysis. There seems to be an increased use of "cherry-picking" facts to support a pre-conceived conclusion, while ignoring the overall reasonability of what the facts portray. In addition, the technical analysis included is often superficial, lacking in-depth research based on reliable sources.

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 constrained. This of course increases costs, which can be substantial if the response required is lengthy.

Overall, TEI feels that improvements can be made in the process of issuing Audit Queries and Proposal Letters, and we would be interested in hearing the CRA's view on the issues raised above.

We have the following recommendations to alleviate some of the unnecessary time and effort required to answer numerous CRA requests:

1. Ensure that Audit Queries are relevant and not duplicative – this can be achieved by having up-front discussions with taxpayers;
2. Coordinate queries between audit teams, again to ensure that requests are not duplicative;
3. Provide advance notice of any areas of focus or issues under investigation by the CRA to avoid unnecessary surprises and ensure agreement on facts that the CRA is using as the basis for their point of view;
4. Discuss the preliminary technical basis for the CRA's factual interpretation;

5. Ensure the timing of a Proposal Letter issuance is discussed with the taxpayer in advance – this is critical as such an issuance has financial reporting consequences, and even if issued post quarter-end will need to be addressed in the financial statements.

TEI invites CRA to comment on the above.

CRA Response:

The Canada Revenue Agency (CRA) agrees that improved communication and coordination at various stages of the audit can only benefit both the CRA and taxpayers by promoting an efficient audit process and technically sound reassessments. The CRA is committed to preserving or improving open communication at all stages of the audit, carried out as a joint responsibility.

The principle of transparency and open communication generally 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 International and Large Business Case Manager (ILBCM) is responsible for the overall compliance relationship so that large corporations will have one point of contact for all audit activities. Part of their responsibility is the co-ordinated approach to audit activities, including the issuances of audit queries and proposal letters.

Our goal is that requests and queries are generally reasonable in the circumstances and necessary to enable the Integrated Teams to ascertain and assure that the taxpayer is compliant and has paid the correct amount of tax. If the requests for information are considered excessive or inappropriate it is recommended that these be discussed with the ILBCM.

We encourage auditors to leverage available technical resources early on in the audit process, and promote transparency with the taxpayer so that all the facts being considered in arriving at a re-assessing position are correct. All proposed reassessing positions should include sufficient information to allow taxpayers to provide a written rebuttal in a timely manner.

Finally, we remind taxpayers to update their list of authorized representatives on My Business Account. An up-to-date list will facilitate timely communication.

Question 4. Risk Based Audits/Timeliness of Audits

Some of our members have concerns that audits are taking longer than usual, with the consequence that taxpayers may be required to sign a waiver to avoid a reassessment. The CRA has expressed to TEI its desire to make audits more current, but this has not been seen in practice by many of our members. Could the CRA please comment on what initiatives it has implemented to make audits more current and the results of those initiatives?

CRA Response:

The CRA recognizes that a more current audit will generally lead to a more efficient audit given the accessibility to both current documentation and the most appropriate staff at the taxpayers. This in turn leads to earlier tax certainty which is a desirable outcome for both the taxpayers and the CRA. As stated last year in our 2022 discussion, ILBD is actively evaluating ways to decrease the time between the initial assessment of an income tax return and the conclusion of an audit. There are various components that contribute to the audit timeline, both before and during the audit stage, and ILBD has been working toward the implementation of some of those related aspects as part of our Approach to Large Business Compliance (ALBC) refresh.

ILBD continues to advance various components that will contribute to making audits more efficient, timely and therefore ultimately current. Some aspects that are currently under development or at various levels of implementation include the following:

- The role of technology in decreasing the timeline between the CRA receiving tax returns and completing the risk assessment process is being refined to allow for a more efficient and shortened timeline before audits are identified and assigned to auditors.
- Work is underway within the branch to update 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.
- Transparent and timely engagement between the CRA and taxpayers is being promoted in order to do our part to minimize costly and time-consuming recourse and litigation at both the information gathering and reassessment stages.
- Technology is being leveraged with respect to the referral process to encourage timeliness and consistency in CRA positions.
- The use of technical experts is being promoted to auditors, focusing on early engagement and improving technical capacity.

The re-introduction of the real-time audit is a part of our ALBC refresh and efforts are being made to properly consider the various impacts that may occur for both the CRA and the taxpayer. While we have not yet selected eligible participants we are beginning an analysis that will identify a very limited number of situations, taking into consideration the challenges that may occur with respect to timelines, capacity and measuring results. 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 (UTPs) contained in the taxpayer’s tax accrual working papers (TAWP).

Question 5. Service Standard for High Complexity Objections

On its website, the CRA indicates that its service standard for the resolution of low-complexity objections and medium-complexity objections is within 180 and 365 calendar days, respectively, from the date the objection was received by the CRA. However, there is no such service standard for the resolution of high-complexity objections.

In its 2016 report, the Auditor General noted that from 2013 to 2016, the amount of tax in dispute remained stable at approximately $18B. The Auditor General also stated that the time reported by the

CRA to process an objection was shorter than the length of time taxpayers waited. Since the Auditor General has also noted that 65% of the objections were allowed in full or in part in favor of the taxpayer, and considering that large taxpayers have to pay upfront 50% of any assessment contested under S.225.1(7), large taxpayers have to wait for years before their objections are addressed by Appeals and receive a refund from the government.

In its 2023-24 Departmental Plan, the CRA indicates that one of its commitments is to improve processing timelines of disputes and related requests. Will the CRA issue a Service Standard for high-complexity objections? Can the CRA comment on how it will improve the processing timelines for high-complexity objections?

CRA Response:

The Canada Revenue Agency (CRA) acknowledges concerns about high-complexity objections and is dedicated to continuous improvement in its operations. The CRA recognizes the complex legal and factual issues often involved in such cases and is committed to treating all objections fairly and impartially.

While there may not be a service standard for high-complexity objections, the CRA is dedicated to addressing them in a reasonable and efficient manner. The CRA reviews cases in the order they are received. The time it takes to process each file depends on the complexity of the case and the availability of necessary information and resources.

In alignment with the 2023-24 Departmental Plan, the CRA committed to enhancing processing timelines for all disputes, including high-complexity objections. Recognizing the impact of extended wait times on large taxpayers, the CRA has implemented measures such as investing in technology and increasing the number of trained professionals to expedite the resolution process.

While some high-complexity disputes may take extensive time to resolve due to their complexity or the need for thorough examination, the CRA remains focused on ensuring fairness and efficiency. The commitment to improving taxpayer experiences during the dispute process is a priority. At all stages, the CRA encourages and appreciates taxpayer cooperation, recognizing its role in facilitating the timely resolution of high complexity objections.

Question 6. Application of Subsection 225.1(7): 50% Prepayment for Large Corporations

Since 2018, TEI has argued to the Department of Finance to repeal or amend subsection 225.1(7). This provision allows the Minister of Finance to collect 50% of the amount owed from an assessment of a large taxpayer. TEI believes that the provision creates a significant legislative imbalance between taxpayers and the government. In addition, we provided a PwC report in 2019 which showed that Canada is not in line with its peers with respect to the prepayment rule nor with the length of time required to resolve tax disputes.

We understand from our discussions with Finance that the CRA sees value in subsection 225.1(7), namely, that it motivates taxpayers to settle disputes earlier, thus allowing the CRA to be more effective in administering the Act. TEI members have had the opposite experience. In fact, the prepayment rule, coupled with the asymmetrical interest rules, arguably work together to provide the CRA with no incentive to resolve issues in a timely manner. While we have no reason to believe that this is by design, the effect is that large corporations routinely have large sums of money tied up in the dispute resolution process, only to be ultimately successful, placing undue hardship on such taxpayers and restricting the use of funds for productive economic activity.

Against this backdrop, a significant reality that underlies the concerns of TEI around the prepayment rule is the length of time required for objections to be considered by Appeals. The time from appeal to eventual resolution can often stretch out for many years. Given that it takes Appeals years to consider and conclude on a reassessment and that there are even further delays if the matter is litigated, this rule seems to be unduly unfair and costly for the taxpayer.

To assist in its discussions with Finance, TEI invites the CRA to express its views on the application of subsection 225.1(7). Specifically:

1. What value does the CRA see in subsection 225.1(7) in the resolution of tax disputes?
2. Can the CRA provide us with an update on the time it takes to have an objection to be heard by Appeals, particularly in the context of those launched by large corporations?

In the interest of full disclosure, we are attaching a package of materials previously provided to the Department of Finance relating to our concerns about this prepayment rule.

CRA Response:

While the application of subsection 225.1(7) is to ensure the collection of tax debts, the CRA also views subsection 225.1(7) as a tool to motivate early resolution of tax disputes, thus contributing to a more effective tax administration. For example, the partial prepayment may motivate taxpayers to engage in meaningful discussion with the CRA to resolve their tax disputes at an earlier stage.

The time it takes to have an objection resolved by the Appeals Branch can vary based on many factors, including the complexity of the issue, the availability of resources, and the volume of disputes being handled. The CRA is committed to addressing objections in a fair and timely manner, recognizing disputes involving large corporations and complex tax matters may require more time for a thorough review.

In our ongoing efforts to improve the efficiency of the objection process, the CRA has implemented various measures, such as investing in technology and increasing the number of trained professionals. However, some disputes may naturally take longer to resolve due to their complexity or the need for thorough examination. The CRA continually assesses its processes and makes improvements to ensure that objections are handled as efficiently as possible while maintaining the integrity of the tax system.

Question 7. Timeliness of Refunds after Disputes

Some of our members have experienced lengthy delays obtaining refunds after being successful in litigation or with CRA Appeals. Large corporate taxpayers are required to pay 50% of assessed

tax within 90 days of receiving a reassessment, however, there does not seem to be any specified timeframe for the CRA to refund cash to a taxpayer following a successful appeal. This is quite frustrating, particularly if the dispute has taken years to resolve with 50% of the disputed amount on deposit with the CRA for the entire period. Is there a specific timeframe for processing taxpayer refunds? How can taxpayers escalate if they have not received their refund within a reasonable time frame?

CRA Response:

The Agency understands the impact of delays on obtaining refunds for large corporations as a result of tax litigation or objection process. The processing of refunds is subject to the completion of the reassessment, and multiple other CRA programs may have further steps before a refund is issued. While there may not be a specific service standard for processing reassessments, as a result of a court decision or resolution of an objection, the CRA is committed to issuing them in a reasonable and efficient manner. Reassessments for large corporations may naturally take longer to process due to their complexity. Taxpayers can reach out to the appeals officer or litigation officer who handled the objection or litigation files, to follow-up on the status of their reassessment and/or refund.

Question 8. Large Case File Manager Support

Some TEI members have experienced a level of support from their large case file managers that has made a significant difference in the administration of their tax matters. For example, TEI members have had numerous positive experiences with large case file managers on administrative matters that could have otherwise resulted in lengthy delays or even penalties. These personal interactions often result in a fair and expedited outcome for both taxpayers and the CRA.

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 and were evaluated for actions such as those described above. Would the CRA consider doing this? It may be worth considering this approach in reviewing possible courses of action with respect to the issues raised in the questions below about My Business Account access, installment transfers, and residency certificates.

CRA Response:

The International and Large Business Case Manager (ILBCM) is responsible for the overall compliance relationship so that large corporations have one single point of contact for all audit activities. One of the benefits of this is simplified dealings between large corporations and the CRA on audit matters.

Due to the number of branches within the CRA, each with their own specialized functions and procedures, it would be very difficult to train an ILBCM to enable them to provide in-depth knowledge and detailed service on all aspects of CRA's functions. However, within the CRA we have been promoting more collaborative relationships between the various branches with the view to better serving taxpayers and reducing the administrative burden.

CRA encourages large corporations to present challenges to their ILBCM who may be able to assist in resolving or facilitating, where possible, the resolution of issues where regular channels have been exhausted. Through the CRA's efforts to raise awareness on cross-Agency issues, as well as leveraging the experiences of individual ILBCM's, we hope that the CRA can help relieve the administrative burden on taxpayers and allow the ILBCM and taxpayers the opportunity to develop and strengthen the collaborative relationship.

C. Administrative Matters

Question 1. Comment Period Concerns

Over the past 18 months, the Department of Finance has introduced an unprecedented volume of new legislation, much of it arising from the OECD's Base Erosion and Profit Shifting project. Examples include the new EIFEL rules, Pillar Two, Mandatory Disclosure, and anti-hybrid rules. Finance has also introduced many changes to existing legislation, including the GAAR. The importance of these changes has rightfully resulted in invitations to taxpayers to comment on the legislation to ensure it achieves its intended purpose. Finance has also invited comments from taxpayers on proposed changes to the transfer pricing rules. In response to many of these legislative changes, CRA has introduced the necessary forms and invited taxpayers to comment on them as well. Finally, CRA has introduced several initiatives to change how taxpayers report their activities, including the new T4A reporting regime and changes to the Advance Pricing Arrangement process.

The legislation and programs noted above are extremely important to TEI, as most of them directly impact its members. However, in consideration of the high volume of legislative changes, the very short consultation periods provided to taxpayers force interested stakeholders, including TEI, to prioritize among them and leave some very important issues to other groups. Those other groups have noted the same constraints. For example, Finance recently introduced changes to the EIFEL rules, the carbon capture utilization and storage ("CCUS") investment tax credit ("ITC"), the two percent share buyback tax, the Clean Technology ITC, the digital services tax, and the GAAR. However, taxpayers were provided only 23 business days to submit

comments on all the above changes. The Pillar Two draft legislation was released on the same day, with only a marginally longer comment period.

TEI appreciates that certain legislation and programs require quick turnaround due to externally imposed deadlines. TEI and the CRA have a strong history of collaboration in the past and we wish that

to continue. Two examples of that relationship are the work done together on the foreign affiliate dumping rules and on the T1134 forms.

However, over the past year, TEI has become concerned that stakeholder input into the legislative and administrative process has not been properly considered, possibly resulting in legislation and policies imposing significant business risks on taxpayers. As a notable example, the CRA published guidance for the Mandatory Disclosure Rules ("MDR") on July 6, 2023 – just days after the close of the comment period on the draft guidance. The comment period itself was less than 2 weeks at a time when most large taxpayers were solely focused on filing their T2 corporation income tax returns. It is very challenging to provide comments within such a limited time. The quick publication of guidance after the close of the comment period was perceived by some taxpayers that the comments were not carefully considered by the CRA.

Finally, TEI would like to discuss circumstances under which it can discuss matters with the CRA and Department of Finance at the same time. For example, the CRA came to TEI early with its draft MDR form and took its comments, but subsequent efforts by TEI to get Finance and the CRA together were unsuccessful.

TEI invites a discussion on how TEI and the CRA can work to ensure that its legislation/programs receive the proper amount of input from stakeholders.

CRA Response:

The CRA appreciates the collaborative relationships that it has with TEI and other stakeholders who were part of the Mandatory Disclosure Rules ("MDR") consultation process. We welcome all feedback and take it into careful consideration.

With respect to the timing of the Guidance, we were conscious that the tax community was looking for administrative guidance to the legislation as soon as possible after the legislation received royal assent.

The Department of Finance's explanatory notes (dated April 2023) stated that "It is expected that, over time, administrative guidance will be provided by the Canada Revenue Agency to assist taxpayers and tax professionals with the application of these rules." The Guidance is an evergreen document that will be updated on a periodic basis.

As you are aware, we released the most recent update to the Guidance on November 2nd. After considering the TEI submission, the Guidance was updated including, but not limited to:

- Price adjustment clauses that are not tax-driven (such as a working capital adjustment clause in a Purchase and Sale Agreement) are not considered to meet the contractual protection hallmark
- The contractual protection hallmark would not apply to tax indemnities in standard provisions such as gross-up clauses in loan agreements or International Swap and Derivative Agreements in a normal commercial context.
- The confidential protection hallmark would not apply to standard confidentiality agreements that do not require tax advice to be confidential, such as a letter of intent
- The insertion of in-house tax advisors into the following: For greater certainty, for a partnership or employer who receives a fee as an advisor or promoter in respect of an avoidance transaction

and discloses a reportable transaction as required, its partners or employees including in-house tax advisors would generally not also need to make a disclosure.

In order to improve the relationship and ensure your comments are duly considered during the consultation process, it would be important to receive responses by the allotted deadline, as we have our own internal approval processes and deadlines to adhere to. In order to observe those deadlines, it is imperative that we receive stakeholder responses by the deadline provided.

Question 2. My Business Account Access

TEI has commented in the past regarding online authorizations in the context of large taxpayers. While the use of My Business Account by “business owners” may provide adequate levels of security for the CRA to grant authorization to employees, the process is unworkable for large taxpayers.

To summarize the issue: it is very difficult for in-house tax professionals within large corporate groups to get online access to the CRA accounts because it can only be granted through My Business Account by an “owner” (i.e., director), assuming level 3 access has not been provided. Upon appointment of a director to a company, My Business Account cannot grant automatic access to these owners because they require association with the owner’s social insurance number (“SIN”). Because corporate registry records do not contain SINs, the only way to attach the owner to that company is by calling the CRA and, after waiting on hold, providing a SIN and, for acquired companies, a selection of financial information from prior tax returns. In large corporate groups, those directors are often very senior people whose time cannot be spent on hold with the CRA. In addition, many members struggle to maintain and keep up to date the list of owners the CRA has on file. As a result, many listings in the CRA’s records are out of date, referencing former executives that have long since left employment or have sold their company. This can create significant issues as these individuals are important in providing level 3 access

and changing other information within the CRA My Business Account system. TEI appreciates that the security of taxpayer information is very important, but this is an administrative matter that a business owner in a large business has staff to handle.

In response to these obstacles, large corporate taxpayers have been appointing fewer senior officers as directors for the sole purpose of obtaining online access for its staff. To TEI and its members, this is an untenable alternative.

We understand that the CRA is aware of the issue and working on solutions, which include discussions with the various provincial and federal corporate administrators. In addition, potential avenues include or could include:

- Granting level 3 access at the time a business number is set up, therefore avoiding the authorization process, and
- Allowing directors to associate their SIN or some other form of authorization via My Business Account online, rather than completing the authorization via the phone.

Other, more problematic issues include (i) situations when a company is acquired, because CRA does not have visibility into the changes of owners unless there is an amalgamation, and (ii) obtaining access for non-resident directors, who do not have SINs.

One change that would greatly simplify the process is for My Business Account to be accessible to officers as well as "owners." Restricting My Business Account administrative authority to directors is unnecessary from a security perspective. An individual with authority to sign a taxpayer's tax filings should have similar authority to determine who can administer the company's tax affairs online, including but not limited to authorization of a corporate taxpayer for E-filing purposes, and all administrative matters. In practice many taxpayers are already doing this by appointing officers as directors, as described above. Making this change would be a drastic improvement in the process even if no other changes were made to the system.

An additional way to accommodate large businesses would be to bring back the RC59 form that was previously used for authorizing individuals to access My Business Account. This would at the very least eliminate the need for top executives to wait on hold with the CRA. To maintain proper levels of security, we recommend that such forms be notarized or certified to ensure their authenticity (if necessary).

TEI invites a discussion with the CRA on the status of this initiative and what other avenues may be available to streamline the online authorization process.

CRA Response:

Our "Access to corporate tax information" page on canada.ca provides information on how to update directors and add the SIN of a director. For example, anyone with access to Represent a Client can use submit documents even without access to the corporate account, to upload a signed request from the director. When there is a change of control or acquisition, we depend on the client to inform CRA so we can verify the information on the respective corporate registry. Requests to add officers of a corporation can also be submitted to the CRA, but they need to be accompanied with meeting minutes validating those persons' roles in the organization.

Business owners or 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.
This level 3 representative will then be able to confirm or deny new authorization requests for other representatives. More information about the levels of authorization is available on the "Level of access you can give" page on canada.ca. Levels and scope of authorization that you can give representatives of your business - Canada.ca

Representatives can also submit a business authorization request in Represent a Client to be a level 3 delegated authority. If a representative submits an authorization request, the director must confirm or deny it within 10 business days in My Business Account or the request will be cancelled. However, in situations where there are challenges to confirm the authorization request, your CRA large file manager may be able to provide guidance or facilitate the process even if the authorization request submitted

has been cancelled. We may be able to work with the large file manager to complete an authorization request submitted without having a director access My Business Account to confirm.

The level 3 delegated authority option, if used as described above along with the possibility of the large file manager to provide guidance or facilitate the process should reduce the involvement and concerns related to directors in large corporations as part of the authorization process.

Once the third party representative has submitted the authorization request, directors may be able to reach out to their established CRA large business audit case manager to obtain guidance on the confirm my representative process.

Question 3. Mandatory Reporting Rules

On June 22, 2023, the proposed changes to the reportable transaction rules in section 237.3 received Royal Assent, with reporting required 90 days after the earlier of a taxpayer being contractually obligated to enter the transaction or actually entering into the transaction.

TEI and other organizations had made submissions urging the Department of Finance to extend the filing deadline to align with the reporting entity's tax return for the year, but we understand that the CRA wanted reporting on a more expedited basis. We have the following questions regarding section 237.3, as well as new sections 237.4 and 237.5:

1. Given that the first reports under section 237.3 were due by September 21, 2023, could the CRA please comment on how it is processing and utilizing information gathered under these rules?
2. Is the CRA reviewing the returns on a current basis?
3. How many returns have been filed to date?
4. Has the CRA referred any reporting entity to the penalty committee, which we understand has been formed?
5. Could the CRA comment on the process for referrals to the penalty committee, and who sits on the committee?
6. Given the timing of the publication of the CRA's guidance on Mandatory Reporting Rules on July 6, 2023 – days after the close of the comment period on the draft guidance – it (understandably) did not reflect many of the comments provided to the CRA by stakeholders. When can we expect the CRA to publish revised guidance reflecting that input and is there a process to provide further feedback on the rules?
7. How will information received under sections 237.4 and 237.5 be processed and utilized by the CRA?
8. Will the information gathered under these reporting regimes be managed centrally at head office or will it be shared contemporaneously with the large file case teams in the local offices? Is the process expected to be different for large corporations versus small corporations/taxpayers?
9. Can taxpayers expect that issues disclosed will be subject to an accelerated review by the CRA to facilitate an expediated review those issues?

10. Would the CRA be willing to review a disclosed issue if requested by the taxpayer? Given that taxpayers will be subject to additional compliance burdens and be required to disclose this information contemporaneously, we believe the CRA and taxpayers should be able to engage earlier on these matters to resolve potential disputes, which would seem to be a win-win scenario. That is, if issues disclosed are not audited by the CRA until the normal audit cycle for the taxation year at issue, this would seem to be a lost opportunity

CRA Response:

1. Given that the first reports under section 237.3 were due by September 21, 2023, could the CRA please comment on how it is processing and utilizing information gathered under these rules?

   The CRA is in the process of reviewing the disclosure forms received to date pursuant to the section 237.3 reportable transaction regime. Please see the replies noted below for additional information.

2. Is the CRA reviewing the returns on a current basis?

   The CRA is reviewing all forms on a timely basis.

3. How many returns have been filed to date?

   We have received a number of information returns, numbering in the triple digits and increasing on a daily basis.

4. Has the CRA referred any reporting entity to the penalty committee, which we understand has been formed?

   No.

5. Could the CRA comment on the process for referrals to the penalty committee, and who sits on the committee?

   There is a mandatory referral to Headquarters for any penalty under the reportable transaction, notifiable transaction and reportable uncertain tax treatment regimes. No penalties will be assessed unless reviewed and approved by senior officials at Headquarters.

   Given the timing of the publication of the CRA's guidance on Mandatory Reporting Rules on July 6, 2023 – days after the close of the comment period on the draft guidance – it (understandably) did not reflect many of the comments provided to the CRA by stakeholders. When can we expect the CRA to publish revised guidance reflecting that input and is there a process to provide further feedback on the rules?

As noted above, the Department of Finance's explanatory notes (dated April 2023) stated that "It is expected that, over time, administrative guidance will be provided by the Canada Revenue Agency to assist taxpayers and tax professionals with the application of these rules." The Guidance is an evergreen document that will be updated on a periodic basis.

6. How will information received under sections 237.4 and 237.5 be processed and utilized by the CRA?

   All forms will be reviewed and potentially sent for audit, depending on the circumstances.

7. Will the information gathered under these reporting regimes be managed centrally at head office or will it be shared contemporaneously with the large file case teams in the local offices? Is the process expected to be different for large corporations versus small corporations/taxpayers?

   The information will be managed centrally at HQ and, depending on the disclosure, it will be forwarded to the relevant program for audit.

8. Can taxpayers expect that issues disclosed will be subject to an accelerated review by the CRA to facilitate an expediated review those issues?

   As stated in question 1, all forms will be reviewed and further consideration will be made on a case-by-case basis depending on the issue disclosed.

9. Would the CRA be willing to review a disclosed issue if requested by the taxpayer? Given that taxpayers will be subject to additional compliance burdens and be required to disclose this information contemporaneously, we believe the CRA and taxpayers should be able to engage earlier on these matters to resolve potential disputes, which would seem to be a win-win scenario. That is, if issues disclosed are not audited by the CRA until the normal audit cycle for the taxation year at issue, this would seem to be a lost opportunity.

   As stated previously, all disclosures will be reviewed on a timely basis. The CRA will not consider taxpayer requests for accelerated reviews of disclosures.

Question 4. Notifiable Transactions Designated by the Minister of National Revenue

Under subsection 237.4(3), the Minister of Finance may designate, in such a manner as the Minister considers appropriate, transactions or a series of transactions as notifiable transactions. Information returns are required to be filed as soon as 90 days after the day on which the taxpayer becomes contractually obligated to enter the notifiable transaction. We have the following questions regarding notifiable transactions:

1. We understand that the Minister will be publishing a list of notifiable transactions. Where will that be published?
2. How often will the list of notifiable transactions be updated? Will the CRA provide a schedule of dates on which the list will be updated so that taxpayers do not have to constantly review the list?
3. If the Minister includes a notifiable transaction on the list, but the taxpayer completed that transaction prior to the inclusion of the transaction on the list, must a taxpayer report the transaction? If so, what is the timeframe for reporting?

CRA Response:

1. We understand that the Minister will be publishing a list of notifiable transactions. Where will that be published?

   We take this opportunity to remind you that the Minister (of National Revenue) may designate, for the purposes of section 237.4, with the concurrence of the Minister of Finance, in such manner as the Minister considers appropriate, transactions or series of transactions. The first notifiable transactions and series of transactions were designated by the Minister, effective November 1, 2023, on the CRA website. The designated notifiable transactions were five of the six 'sample' notifiable transactions that were published for consultation by the Department of Finance on February 4, 2022.

   One can subscribe to the electronic mailing list to be alerted when a notifiable transaction is designated by the Minister here: https://www.canada.ca/en/revenue-agency/news/e-services/canada-revenue-electronic-mailing-lists/electronic-mailing-list-notifiable-transactions.html

2. How often will the list of notifiable transactions be updated? Will the CRA provide a schedule of dates on which the list will be updated so that taxpayers do not have to constantly review the list?

   The list of notifiable transactions will be updated from time to time by the Minister in concurrence with the Minister of Finance; there are no scheduled dates. As noted above, one can subscribe to the electronic mailing list to be notified of new notifiable transactions designated by the Minister.

3. If the Minister includes a notifiable transaction on the list, but the taxpayer completed that transaction prior to the inclusion of the transaction on the list, must a taxpayer report the transaction? If so, what is the timeframe for reporting?

   This information was included in the MDR Guidance. Reporting obligations for notifiable transactions begin after the effective date of designation of the notifiable transaction. Reporting obligations will also apply to transactions that "straddle" the effective date of designation. For example, if a person contracted to enter into a notifiable transaction a month

before the effective date of designation, but did not enter the relevant transaction until after the effective date of designation, the reporting obligation will apply and the 90 day reporting period will begin on the date the person entered into the transaction.

Question 5. Bare Trust Reporting Rules

Further to our telephone conversation with Marie-Josee Laporte and Paul Wilson of July 30, 2023, TEI provided a written submission on September 27th, 2023, on our concerns regarding the administrative and compliance burden associated with the new Bare Trust Reporting Rules. Can the CRA provide an update on the consideration of this matter?

CRA Response:

On December 15, 2022, Federal Bill C-32, Fall Economic Statement Implementation Act, 2022, received Royal Assent and introduced new tax return filing and information reporting requirements for trusts. These changes were made as part of Canada's continuous efforts to ensure the effectiveness and integrity of the Canadian tax system.

Under the new rules, for tax years ending after December 30, 2023, three main changes to the reporting rules for trusts will occur:

1. All trusts, unless certain conditions are met, will be required to file an annual T3 Return with the Canada Revenue Agency (CRA).
2. Trusts that are required to file a T3 Return, other than listed trusts, generally need to complete new Schedule 15 in their annual T3 return to report beneficial ownership information.
3. Bare trusts are now subject to the new reporting rules, that is to file an annual T3 Return with the new Schedule 15. As the filing of a T3 Return without the Schedule 15 is considered to be incomplete, for the remainder of this document reference will be to T3 Return/Schedule 15.

Bare Trusts

A bare trust is a trust arrangement under which the trust can reasonably be considered to act as agent for all the beneficiaries with respect to all dealings with all of the trust's property; that is, the trustee's only function is to hold legal title to the property and the beneficial ownership is held by the beneficiaries. All income and capital gains from the trust property are reported by the beneficial owner of the property.

Before the implementation of the new rules, bare trusts were generally disregarded for income tax purposes. Under the ITA, a bare trust was not considered a trust and, therefore, was not required and had no obligation to file a T3 Return/Schedule 15.

The new trust reporting requirements were first proposed in Budget 2018, with the inclusion of bare trusts into the new reporting rules proposed in the February 2022 Legislative Proposals. Thus, in addition to the Schedule 15 filing requirements, these new reporting rules will result in a substantial increase in filings due to the addition of bare trust filings.

To promote awareness of the new trust reporting requirements, in particular for bare trusts, the CRA has developed Frequently Asked Questions (FAQs) to provide technical filing guidance on the new rules outlining which trusts are exempted, and how the new rules will apply to bare trusts. The FAQs are part of the CRA proactive, medium profile communication approach which include tactics like tax tips, stakeholder desk messages, and social media. The CRA will leverage its stakeholders and other government departments to amplify the reach of its communications in promoting awareness of the new trust reporting requirements and associated web content. Additionally, more technical questions will be answered by the Income Tax Rulings following the established process.

Recently the CRA confirmed that it will not require the filing of trust returns by Charities who hold internal trusts. However, no other exemptions from these reporting obligations are allowed.

The CRA will provide relief to bare trusts by waiving the penalty payable under subsection 162(7) for the 2023 tax year in situations where the T3 Return and Schedule 15 are filed after the filing deadline. For the 2023 tax year, where the tax year of the trust ends on December 31, 2023, the filing deadline of March 30, 2024, is extended to April 2, 2024, the first business day after the deadline.

This proactive relief is for bare trusts only and only for the 2023 tax year.

However, if the failure to file the T3 Return and Schedule 15 for the 2023 tax year was made knowingly or due to gross negligence, a different penalty may apply. This penalty will be equal to the greater of $2,500 and 5% of the highest amount at any time in the year of the fair market value of all the property held by the trust.

Bare trusts did not have an obligation in years prior to the 2023 tax year to file a T3 Return, and the CRA recognizes that the 2023 tax year will be the first time that bare trusts will have a requirement to file a T3 Return including the new Schedule 15.

As some bare trusts may be uncertain about the new requirements, the CRA is adopting an education-first approach to compliance and providing proactive relief by waiving the penalty under subsection 162(7) for the 2023 tax year in situations where the T3 Return and Schedule 15 are filed after the filing deadline.

Question 6. Installment Payments

a. *Installment Transfers*

TEI members have received the following message when trying to transfer corporate tax installments between tax years.

001 - We are experiencing technical difficulties. You can submit an enquiry through the Enquiries service. Go to the account Overview page, select "Enquiries service" and then select "Submit a written enquiry". (Ref. code: TEC001)

Screen ID: E-RC-TP-01

Date modified: 2023-05-15

TEI members have attempted a "work around" solution by submitting a transfer request through the Enquiries Service in My Business Account. This has proven to be very inefficient because it usually takes two weeks or more for the transfer to be completed, whereas the installment transfer function process (when working properly) is instantaneous.

Further technical issues relate to transferring installment balances amongst a related group of taxpayers. Specifically, in cases where it is unknown what a taxpayer's liability will be in a particular taxation year because of the transfer of certain deductions (for example, part VI.1 transfers under section 191.3), it currently takes the CRA up to six months to transfer installments between accounts after receiving a request to do so. Considering the impending legislation around the interest deductibility rules, which will also allow taxpayers to transfer deductions to related parties, the requests for instalment transfers will grow.

TEI members have noted that other revenue authorities like Revenue Alberta have adopted an approach whereby installment transfer requests either between taxation years, or between related taxpayers, are submitted via email. These requests are processed in one to two business days. TEI has the following questions regarding installment transfers:

1. Could CRA please confirm if they are aware of the error message issues when transferring between tax years and provide an update on when this issue will be resolved?
2. Could CRA provide taxpayers with any context as to why making a transfer of installments between related taxpayers is such a time-consuming process and whether anything can be done or is being considered to address these long timelines?
3. Would CRA consider adopting a similar approach to processing installment transfers consistent with Alberta Tax and Revenue Administration in which they accept requests for installment transfers via email, as our members tell us these requests are processed in one to two business days?

b. *Taxpayers access to information for those who have made Functional Currency elections.*

While most taxpayers have full real-time access to corporate income tax account details on My Business Account and are often issued statements of account in the mail, taxpayers that report in a functional currency other than Canadian dollars do not have access to either of these functions.

For these types of taxpayers, such details are only available by request from the CRA's Functional Currency Enquiries help line, which are subsequently faxed to the taxpayer at a much later date.

Further, when Notices of Assessment are issued, 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 even when the installments were paid in the taxpayer's functional currency. No information is provided regarding what foreign exchange rates were applied to the installments, which would be helpful in account reconciliation.

For example, if a U.S. dollar functional currency entity has made monthly installment payments throughout the year in the U.S. dollar, no statement of account is issued or made available to the taxpayer during that year. Instead, at the end of the tax-year when the corporate T2 is finally assessed, the taxpayer is only provided with a CAD installment balance total on the Notice of Assessment. We have the following questions regarding this process:

1. While we understand there are complexities in dealing with multiple currencies (functional currency vs. CRA's CAD balances), could the CRA explain to why corporate income tax account details for non-CAD functional taxpayers are not made available through My Business Account?
2. Does the CRA intend to provide these account details to non-CAD functional taxpayers in the future and its willingness to maintain these records (installment balances) in the applicable functional currency?
3. Is the CRA willing to include with Notices of Assessments for taxpayers who have made a functional currency election and made monthly installments in that functional currency details relating to the installment account (such as a statement of account), including foreign exchange rate conversions made and applied to the balance?

CRA Response:

1. Could CRA please confirm if they are aware of the error message issues when transferring between tax years and provide an update on when this issue will be resolved?

   Response:

   CRA is not aware of error message issues when transferring between years. The TEC001 error displays for a variety of reasons when technical difficulties are experienced such as validation of the Business Number or temporary system outages but would not display for a transfers between tax years.

2. Could CRA provide taxpayers with any context as to why making a transfer of installments between related taxpayers is such a time-consuming process and whether anything can be done or is being considered to address these long timelines?

   Response:

   Requests submitted through the Enquiries Service in My Business Account to transfer between related taxpayers (two different Business Numbers) are processed manually on a first in, first

out basis. As part of the process, the accounting officer needs to verify that the two accounts are related and that there is a schedule 9 (Related and Associated Corporations) on file. If there is no schedule 9 submitted, the accounting officer would need to contact the corporation to obtain the schedule, which would create an additional delay, while waiting for the information to be sent by the taxpayer.

3. Would CRA consider adopting a similar approach to processing installment transfers consistent with Alberta Tax and Revenue Administration in which they accept requests for installment transfers via email, as our members tell us these requests are processed in one to two business days?

   Response:

   The CRA has no plans to accept email requests for instalment transfers.

b. Taxpayers access to information for those who have made Functional Currency elections.

While most taxpayers have full real-time access to corporate income tax account details on My Business Account and are often issued statements of account in the mail, taxpayers that report in a functional currency other than Canadian dollars do not have access to either of these functions.

For these types of taxpayers, such details are only available by request from the CRA's Functional Currency Enquiries help line, which are subsequently faxed to the taxpayer at a much later date.

Further, when Notices of Assessment are issued, 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 even when the installments were paid in the taxpayer's functional currency. No information is provided regarding what foreign exchange rates were applied to the installments, which would be helpful in account reconciliation.

For example, if a U.S. dollar functional currency entity has made monthly installment payments throughout the year in the U.S. dollar, no statement of account is issued or made available to the taxpayer during that year. Instead, at the end of the tax-year when the corporate T2 is finally assessed, the taxpayer is only provided with a CAD installment balance total on the Notice of Assessment. We have the following questions regarding this process:

1. While we understand there are complexities in dealing with multiple currencies (functional currency vs. CRA's CAD balances), could the CRA explain to why corporate income tax account details for non-CAD functional taxpayers are not made available through My Business Account?
2. Does the CRA intend to provide these account details to non-CAD functional taxpayers in the future and its willingness to maintain these records (installment balances) in the applicable functional currency?
3. Is the CRA willing to include with Notices of Assessments for taxpayers who have made a functional currency election and made monthly installments in that functional currency details

relating to the installment account (such as a statement of account), including foreign exchange rate conversions made and applied to the balance?

CRA Response:

1. While we understand there are complexities in dealing with multiple currencies (functional currency vs. CRA's CAD balances), could the CRA explain to why corporate income tax account details for non-CAD functional taxpayers are not made available through My Business Account?

   Response:

   Functional Currency conversion lines are excluded from viewing in MyBA based on current system functionality. A taxpayer filing in functional currency would not be able to see any conversion amounts from the View Return option in MyBA.

2. Does the CRA intend to provide these account details to non-CAD functional taxpayers in the future and its willingness to maintain these records (installment balances) in the applicable functional currency?

   Response:

   While we will consider this for future planning, current system architecture does not allow for these details to be available in MyBA.

3. Is the CRA willing to include with Notices of Assessments for taxpayers who have made a functional currency election and made monthly installments in that functional currency details relating to the installment account (such as a statement of account), including foreign exchange rate conversions made and applied to the balance?

   Response:

   This is not an option that the CRA is currently considering. That said, the CRA can, on a case-by-case basis, provide taxpayers the steps used to convert the instalment requirements and taxes when requested on a statement of account.

Question 7. Government Assistance

In May of 2023, the Supreme Court refused leave to appeal of the CAE Inc. case (2022 CAF 178), which dealt with a low interest loan received by the taxpayer from Industry Canada. The Tax Court of Canada found that such loans constituted "government assistance" within the meaning of subsection 127(9) of the Act. The decision was confirmed by the Federal Court of Appeal in October 2022.

In CAE, the loan was unconditionally repayable, but the court found that the low implied interest rate (approximately 1.15% below the risk-free rate of return) was low enough to deem the loan to not be an "ordinary commercial arrangement."

Over the past few years, the federal government has sent clear signals to Canadian businesses of its desire for Canada to innovate, fight climate change by building green infrastructure, and provide ownership and capacity building opportunities to Indigenous communities in Canada. In doing so, the government has introduced various programs under which Canadian businesses can obtain loans at interest rates below that which can be obtained from a commercial lender. In many cases, like with CAE, the loans are unconditionally repayable and differ only from

commercially obtained loans in the interest rates charged. Two providers of such loans are the Strategic Innovation Fund ("SIF") and the Canada Infrastructure Bank ("CIB"). In addition, where a project incorporates meaningful ownership by Indigenous communities, taxpayers may receive grants from, for example, Natural Resources Canada.

Given the increased profile of these programs, taxpayers are uncertain what constitutes government assistance under the Act. Can the CRA comment on what conditions must be present for an unconditionally repayable low-interest loan from a government to be considered "government assistance?" In other words, how different from a "normal" commercially obtained loan must a government loan be?

CRA Response:

The 2023 Fall Economic Statement of November 21, 2023 proposes to amend the Act to provide that bona fide loans that do not bear interest or that bear interest at below-market rates (referred to as "concessional loans") with reasonable repayment terms from public authorities will generally not be considered government assistance.

This amendment would come into force on November 21, 2023.

We will be in a position to provide further interpretative guidance in this respect once the legislation is enacted.

Question 8. Qualifying Environmental Trust – Part XII.4 Tax Credit

In claiming the credit under section 127.41 (qualifying environmental trust beneficiary), which is done on line 792 of Schedule 200 of the Corporate Tax Return, CRA agents have requested supporting documentation prior to issuing notices of assessment. These documents include:

- A copy of the letter from external parties preparing the T3M returns denoting the credits claimed by jurisdiction (Federal/Provincial);
- A signed copy of the T3M trust return required to be filed with CRA by the trust under 211.6(3) of the Income Tax Act; and
- Supporting calculations for allocation of credits to partners of a partnership (also included on the T5013 slip filed with the CRA).

Proactive efforts to provide the information ahead of time to avoid these questions have been unsuccessful. Methods to provide this information include:

- Mailing a paper copy of the noted documents to the designated tax center, along with a cover letter with the return; and
- Attaching the requested documents electronically to the tax return prior to filing.

There do not appear to be any provisions in the Act that indicate the requested documents should be provided with the tax return to support the claim of credits under section 127.41. It appears that these amounts should be supported by information already provided to the CRA through T3M returns and T5013 slips.

Can the CRA clarify whether they are aware of this duplication and are working to alleviate the administrative burden placed on taxpayers and agents requesting this information?

CRA Response:

When the value of the tax credit claimed on the T2 return cannot be reconciled with the amount of income reported in respect of the trust, substantiation will be requested (the T3M, Environmental Trust Income Tax Return, directs the trust to issue a letter or statement to each beneficiary of their share of the refundable provincial tax credit and the province to which it applies, the refundable federal tax credit, net capital losses, capital gains, non-capital losses, and other income).

We will ask the client to obtain a letter from the qualifying environmental trust with the following information:

a) name, address, and taxation year of the Qualifying Environmental Trust;
b) name of beneficiary (the corporation); and,
c) amount of the Federal qualifying environmental trust tax credit allocated to the corporation.

This information is generally not found on the T3M return but should be in the letter or statement the trust is directed to issue each year.

Since January 1, 2022, we have contacted approximately 300 corporations for this situation. If a T5013 slip is received and a corporate (RC) account is indicated, generally no client contact is required.

Question 9. Mutual Fund Trust

When taxpayers must obtain information on Mutual Fund Trusts, the contact number is the same general enquiry line for personal income taxes and benefits. Once the taxpayer gets through the line, it takes about two transfers to talk with a senior agent who can assist with enquiries relating to the particular T3 return. Typical questions include but are not limited to the status of the

Funds' tax returns and whether a notice of assessments has been issued. Average hold time on the line is 3.5 to 4 hours. Can the CRA provide a separate phone line for questions on Trusts?

Additional information provided by TEI via email for context:

When some of our members require information relating to Mutual Fund Trusts, the general enquiry line does not have a menu option for "Trusts". The only option available is "Other". The wait time on average is about 1 hour to speak to an agent after choosing "Other". After providing the agent the specifics, the caller is transferred to the department that handles Estates and Trusts. This is typically a 1 hour and 30 minute wait, sometimes longer. Upon determining with the Estates and Trusts Department that the question relates to a mutual fund trust, the query is routed yet to another agent who specializes in this area, which results on average another 1 hour on hold to speak to the agent.

If a separate phone line is not be feasible, our request is to add "Estates and Trusts" as a menu option to the general enquiry line, with a sub-menu option to choose between testamentary and intervivos trusts, so the call is directed to the correct department more quickly.

CRA Response:

The creation of a dedicated trust phone line has been studied and is not a feasible solution for various operational reasons. However, the CRA studied the feasibility of adding the option for estates and trusts on the Interactive Voice Response (IVR) main menu. As a result, when calling the individual tax enquiry phone line, it is now possible to select an option from the main menu to speak directly to an agent trained to answer Estate and Trust-related questions.

Question 10. Statement Details Contact Number

Our members have noticed that Statement details, specifically for Statement of account for current source deductions, no longer include a telephone number for contacting the CRA to obtain an explanation of changes or other important information. The only note refers to "My Business Account" online services. A telephone number for contacting the CRA still appears on the Notice of Assessment.

Can the CRA explain why there is no longer a CRA contact phone number on Statement details?

CRA Response:

The Canada Revenue Agency has always focused on quality of service and providing consistent messaging to Canadian employers, which is why we have completely revamped the payroll web content on Canada.ca and have added a "vanity" URL to correspondence with employers about their payroll accounts. These URLs lead to easy to understand web content that contains detailed information, allowing many employers to find answers to their questions online without having to use the traditional method of calling and experiencing significant wait times. As a result, our staff can focus their efforts on reducing processing times and providing better service to employers. However, we know that in very specific cases employers may want to speak with a CRA officer, so our webpages also contain a «Contact

the CRA» section to allow them to communicate with us should they need to. We are monitoring closely to ensure that these changes are having the desired effect, and will make adjustments as and when needed to ensure a high quality of service for employers.

D. Follow-up Questions and Carryover Items from Prior Years

Question 1. Residency Certificates

In Question 4 of the TEI submission in 2022, we asked how the CRA could improve the Residency Certificate process. Some of our members continue to have long delays in response to requests for Residency Certificates in 2023. Can the CRA provide an update on its review that was undertaken and whether a new and improved process is being considered and if so, the estimated timetable for implementation as there seemed to be no improvement in 2023?

CRA Response:

The changes that were made to the administrative processing model in 2022, including the centralized national intake, did result in some initial challenges particularly for the certificate of residency workload and temporarily contributed to further backlog in 2023. However, as stated in our previous response, we have addressed the backlog and improved the processing timeframe by temporarily reassigning more employees to the processing of certificates of residency. The average processing timeframe is now approximately 8 weeks starting from the later of January 1st for the tax year being requested or from the date received. The reassignment of additional employees was made possible to our new administrative model.

However, it is important to note that some requests may take longer, for example:

- Complex files (e.g. unique/special article of tax treaty being referenced)
- Uncommon foreign forms that require additional review to determine if they can be certified
- Large (“bulk”) requests, for example one submission for multiple entities, multiples years, and multiple jurisdictions (please refer to our previous response on this point).

We have also implemented the changes with respect to Limited Power of Attorney authorizations. This type of authorization is now recognized as valid authorization to obtain information related to a certificate of residency request.

We are continually examining further improvements that can be made for processing all types of correspondence the Contact Centres, including certification of residency.