

January 2016

# 2015 Canada Revenue Agency (CRA) Tax Roundtable

The annual Canada Revenue Agency (CRA) Roundtable Meeting was held in May 2015. A number of CRA representatives were in attendance, along with representatives from the profession.

As in previous years, two concurrent roundtable sessions were held, one focusing on GST issues and the other on income tax matters. All participants also attended a general wrap-up session.

For more information on the session, or on the 2016 Roundtable, contact Director of Professional Services Larry Brownoff, CPA, CA at [lbrownoff@cpaalberta.ca](mailto:lbrownoff@cpaalberta.ca) or call 1-800-232-9406.

***The responses are provided by CRA for information purposes only and relate to provisions of the law and policies in force at the time of publication and are not a substitute for the law. Responses might not extend to all situations and are not determinative of the tax treatment of a specific taxpayer's situation.***



# Income Tax Questions

## PLENARY

### 1. Owner-Managed Business Audits

It was indicated in the previous year that when owner-Managed Businesses are audited, there is a requirement to provide not only the relevant documents and statements for the Company under audit, but also personal items of the shareholders. In addition, there have been requests to obtain such information from family members of the shareholders.

- (a) Where CRA requests documents relating to a family member, what should the taxpayer do when he does not have the legal authority to obtain those documents from such individuals? Can the CRA provide details of their policies and procedures in respect of the use of other taxpayers' information in the course of a review or audit of taxpayer information? In particular, we would request any recent review of, or changes to, these policies be provided.
- (b) What action should a taxpayer, or their advisor, take if they believe a CRA information request, or information related to a different taxpayer which has been disclosed to them, is not consistent with the restrictions imposed by section 241? Without restricting the generality of the question, we would appreciate your specific comments on any requirement to advise the taxpayer whose information has been provided of the receipt of this information.
- (c) What avenues of recourse are available to the taxpayer where they disagree with CRA's interpretation of the restrictions under section 241?

#### CRA Response:

*When small and medium businesses are selected for audit, the CRA seeks to gain assurance about the completeness of the income reported in their tax filings. In these businesses, internal controls are usually weak and segregation of duties is generally absent. The use of indirect tests in these situations is a generally accepted means of gaining assurance about the completeness of the income reported.*

*Indirect tests that are undertaken by the CRA include bank deposit analyses, rough net worth calculations, or analyses of sources and applications of funds. In order to undertake these tests and assess risk of unreported income effectively, auditors must obtain complete financial information of the individual taxpayer or corporation whose business is under audit.*

*Where the business is carried on in a sole proprietorship, or in a corporation with a sole shareholder or that is closely held, there is potential co-mingling of business and personal funds. As such, when performing indirect tests, auditors will also request personal financial information of the spouse (or common law partner), the shareholder of a corporation and his or her spouse (or common law partner), and other contributing individuals living in the same household.*

*The authority to request personal bank statements of the shareholder, spouse (or common law partner) and other contributing individuals is outlined in subsection 231.1(1) of the Income Tax Act (ITA). This provision permits the CRA to inspect, audit or examine records of other persons where*

*information in those records may relate to information that is or should be in the books and records of the taxpayer who is under inspection, audit or examination.*

*All personal information of the taxpayer and other persons is requested at the start of the audit enabling auditors to confirm, at the outset, that business transactions are reported within the business and not in the personal bank accounts of the proprietor, shareholder or their family members.*

*Where the information related to a family member cannot be provided by the taxpayer under audit, the CRA will seek to obtain the information directly from the family member.*

*The privacy and confidentiality of taxpayer information is protected and managed under the strict confidentiality provisions of section 241 of the Income Tax Act, and we are also obliged to protect personal information under the provisions of the Privacy Act. Please be assured that the CRA respect the obligations in using all information that we obtain from taxpayers in the course of our audits.*

*Paragraph 241(4)(a) permits the provision of taxpayer information to any person that can reasonably be regarded as necessary for the purposes of the administration and enforcement of the Act. Where information obtained from a third party is to form a part of the basis of an adjustment, auditors are instructed to ensure that only information relevant to the adjustment is provided.*

## **2. CRA Technical Positions**

We are used to receiving various interpretations from the Rulings Division, however we recently received an Audit proposal letter referring to a “Ruling” from CRA’s Legislative Application Section (LAS) and attaching an excerpt from same. It appears this is a division of Audit, rather than Rulings. This gives rise to a few questions:

- (a) Does the CRA have two different groups for the same function (interpreting the legislation)?

### **CRA Response:**

No.

*The Legislative Application Section (LAS) is found within the Large Business Audit Division of the Compliance Programs Branch (CPB) and is responsible for the provision of various audit and technical support functions to the audit community. In this regard it provides technical assistance to large case auditors in the application of the ITA to specific facts and issues identified in the context of an income tax audit. CPB is responsible for administering the provisions of the Income Tax Act and audit policies and guidelines. This is accomplished, in part, through the technical interpretation services received from the Income Tax Rulings Directorate (ITRD).*

*ITRD is found within the Legislative Policy and Regulatory Affairs Branch. Its role is to interpret the Income Tax Act. ITRD’s interaction with the auditors focuses on interpretive issues. It is also responsible for dealing directly with taxpayers on Advance Income Tax Ruling requests or*

*technical queries about the interpretation of the Act.*

*It is important to note that these two technical areas consult and interact with each other as deemed necessary on a file by file or issue by issue basis.*

- (b) To what extent does the LAS coordinate with Rulings to ensure their interpretations are consistent?

**CRA Response:**

*Where necessary, LAS will consult with other CRA areas including, for example, ITRD or CRA Legal Services. If there is a question about the interpretation of the ITA, LAS will refer it to the ITRD. ITRD and LAS have a close working relationship and consult each other regularly to ensure consistent application and interpretation of the provisions of the Income Tax Act.*

- (c) We received only an excerpt but the full context of technical analyses is often critical to properly understanding them. As well, the facts relied on by LAS could be in error or incomplete but this cannot be verified because they have been omitted. Is the full document from LAS available to taxpayers? If not, please explain.

**CRA Response:**

*In most cases, LAS will provide a written memorandum responding to the auditor's query. Such memoranda are issued directly to our clients, who are the auditor, manager, or tax services office (TSO) from whom the query originated. The nature of the queries varies and as such, distribution of an LAS memorandum is at the discretion of the requestor, generally the auditor or audit manager. Taxpayers may informally request a severed copy of the memorandum from the auditor or manager assigned to their case, or alternatively, may formally request the document via the Access to Information procedure (ATIP). We encourage informal requests and responses in order to promote transparency and an efficient audit process.*

*Depending on the timing of the query in relation to the audit, the auditor may, at his or her discretion, provide an opportunity to the taxpayer to provide representation to LAS to be included in the documentation supporting the technical query.*

- (d) We are advised that various Memorandums of Understanding between various CRA sections have been entered into recently, including one which restricts the LAS to application of the law to specific facts, with interpretation of the law itself being delegated to the Rulings Division. Will the CRA publish the details of these MOU's to enable taxpayers and their advisors to assess whether their terms are being appropriately applied, and request the involvement of the appropriate branch when these terms appear not to be followed?

**CRA Response:**

*The CRA Memorandum of Understanding (MOU) between ITRD and ILBD is an internal document. It does not act so much to restrict the operations of either area but rather clarify general guidelines to the TSOs and the various technical areas regarding the process of making a technical referral to Headquarters. Such a consistent referral process helps streamline the incoming queries, ensure consistency of responses, and allows the Compliance Programs Branch*

*to monitor requests of a similar nature. The division of responsibilities between CPB (administering and applying the ITA) and ITRD (interpreting the ITA) has not changed. Overall, the flow of requests in accordance with the provisions of the MOU are expected to allow the CRA to utilize its technical resources in the most efficient and effective manner.*

*The management and ultimate disposition of a particular query is an internal process. Whether a particular referral is directed to ITRD or CPB is decided on a case-by-case basis as determined by LAS, the intake coordinator, in consultation with ITRD as necessary. CPB and ITRD maintain communications on files as deemed necessary.*

### **3. Penalties and Penalty Relief**

Where a taxpayer is assessed a penalty with which they do not agree, two common options exist for contesting it: they can apply for penalty relief, or they can object to the penalty itself. Often, the legislated criteria for a penalty are met, but the taxpayer feels that they exercised due diligence, which the Courts have indicated is always a defense, even where not specified as such in the legislation.

CRA's general policy is to waive penalties only in situations of:

- extraordinary circumstances beyond the taxpayer's control;
- where actions of the CRA contributed to the penalty (such as errors in materials available to the public or incorrect advice from a CRA representative);
- financial hardship.

CRA also appears to consider penalty relief appropriate only where the taxpayer has taken reasonable steps to avoid the error or omission in the first place, or to correct any errors or omissions in a reasonable period, considering the impact of extraordinary circumstances and/or CRA actions. With this in mind, we have the following questions:

- (a) Timely application for penalty relief is important, and deadlines apply to Objections and Appeals. This suggests taxpayers are well advised to pursue both approaches simultaneously. What are CRA's policies and processes where the same penalty is the subject of both Objection/Appeal and a penalty relief request?

#### **CRA Response:**

*Penalty and interest are non-discretionary assessments; they are assessed as a result of non-compliance with the legislated obligations.*

*When a person files an objection to the interest and penalty amounts assessed on initial assessment or audit assessment, the main dispute is whether or not the CRA has correctly applied the legislation to assess the type of interest/penalty and whether the assessed amount is correct.*

*In resolving the objection, the appeals officer will determine the following:*

- *Whether penalty and interest is applicable under the relevant Tax Acts; and*
- *Whether the amounts are correctly calculated.*

*The appeals officer will also consider arguments (including due diligence defence) in making a decision on the objection/appeal case.*

*The Canada Revenue Agency's (CRA's) general policy is to review taxpayer requests for interest and penalty relief at the same time as any associated tax issue(s) under objection or appeal.*

*Where an active objection or appeal case is identified, the relief request is referred to the responsible appeals officer to be reviewed concurrently along with the tax issue(s) under dispute on which the penalty and interest were assessed.*

*While the review of an objection is ongoing, the appeals officer may communicate an informal decision on interest and penalty relief to the taxpayer. However, a formal written decision will generally not be issued until the objection or appeal is resolved or until all rights of appeal have expired.*

- (b) How can we, as advisors, assist CRA in identifying situations where both avenues are being taken, in order to minimize inefficiencies for both CRA and the taxpayer? For example, would the CRA prefer the same information be submitted with both an Objection and an RC428, including clearly indicating both are being filed in respect of the issue?

**CRA Response:**

*Taxpayers are encouraged to provide a detailed account of the facts and circumstances surrounding their failure to comply and the penalty assessed as a result.*

*Where the facts and circumstances of a dispute involve both due diligence arguments (i.e., reasonable effort was made and steps taken to comply) and interest and penalty relief considerations (i.e., taxpayer was unable to comply due to circumstances beyond their control), the taxpayer should be advised to file a Notice of Objection (NOO).*

*The objection/appeals review process focuses on the legislation, arguments presented by the person filing the dispute, and correct calculation of the assessed amount, while Taxpayer Relief considers circumstances where the Minister may apply discretion to waive or cancel penalty and/or interest.*

*The appeals officer will review the facts and circumstances and consider the taxpayer's arguments in the context of both due diligence and relief, as appropriate. If the taxpayer is successful in demonstrating due diligence, the penalty is not exigible and the assessment will be vacated. In this case, a request for penalty relief would become redundant.*

- (c) It seems unlikely that a taxpayer who was prevented from complying with their tax obligations by extraordinary circumstances or actions of the CRA, but who rectified the error in a reasonable period thereafter, would not be considered to have exercised due diligence. Outside of financial hardship, can the CRA provide any examples of a taxpayer who has not exercised due diligence, but who would be considered eligible for penalty relief?

**CRA Response:**

*To establish due diligence, the taxpayer must demonstrate that positive steps were taken to meet*

*their tax obligation and that a reasonable effort was made to comply. The focus of the review is on the events and actions taken leading up to the failure.*

*When reviewing a request for interest or penalty relief, the CRA will consider the circumstances surrounding the non-compliance as well as other factors, including the taxpayer's previous compliance history, whether the taxpayer exercised a reasonable amount of care, and how quickly the taxpayer remedied any delay or omission.*

- (d) We appreciate CRA is subject to competing objectives, in that Parliament clearly indicates penalties be assessed in some circumstances (or the penalty would be repealed), but equally clearly recognizes there are cases where the technical requirements of a penalty, including failure to exercise due diligence, are met, but the penalty should not be enforced (the reason for penalty relief existing). Would the CRA consider, perhaps jointly with the tax community, submitting a request that Parliament provide more detailed guidance as to the types of circumstances where they wish penalties to be waived, and where they wish them to be upheld?

#### **CRA Response:**

*The existing taxpayer relief provisions of the Income Tax Act (and similar provisions in other Acts) do provide the Minister's delegate with the broad discretionary authority to grant penalty relief in certain circumstances when taxpayers were prevented from complying with their income tax obligations. The CRA has general guidelines in Information Circular 07-1, Taxpayer Relief Provisions that describe types of non-exhaustive circumstances where it may be appropriate to waive (not assess penalties) or cancel assessed penalties. Each request for penalty relief is decided based on its own merit.*

*This broad discretion already gives the CRA adequate ability to be flexible and responsive to the taxpayer's particular circumstances in deciding whether penalty relief is warranted. The CRA remains open to discussing any specific concerns faced by the tax community with the taxpayer relief provisions (including the guidelines in IC 07-1) or the penalty assessment provisions.*

#### **4. Common Adjustments**

Please provide a summary of the most common areas of audit review and adjustments in the course of:

- (a) Audits of private corporations and their shareholders;
- (b) Reviews, include pre- and post-assessment reviews, of personal income tax filings;
- (c) Reviews under the "high net worth individuals" project.

#### **CRA Response:**

*Part (a)*

*Please refer to the CRA Common adjustments webpage*

*at: <http://www.cra.gc.ca/tx/ndvdl/tpcs/ncm-tx/rvws/djstmnts-eng.html>*

*Part (b)*

*Please refer to the CRA Common adjustments webpage*

at: <http://www.crarc.gc.ca/tx/ndvdl/tpcs/ncm-tx/rvws/djstmnts-eng.html>.

(Part (c))

*Our Related Party Initiative program is responsible for compliance reviews of high net worth individuals (HNWI). From our research and compliance activities in this area, we have noted that HNWI are a diverse population engaged in a wide variety of business activities. They often conduct business and hold wealth through a range of entities, including private corporations and personal trusts, and operate in assorted geographic locations which may include offshore interests. Our compliance reviews are adapted to these structures. Therefore, in addition to reviewing compliance by the corporations in the HNWI's organizational structure, we also risk-assess compliance at the HNWI's personal level by examining the role of personal trusts, private foundations, and partnerships in the structure and evaluating the impact of offshore entities. Our risk evaluations are now supplemented with more detailed data available from robust foreign reporting rules and broader access to electronic funds transfer (EFT) information.*

*The compliance issues we have detected have been equally diverse but not unusual, including capital gain versus income issues, lack of foreign reporting, write offs of personal-use property and failure to report certain income. We have also noted frequent participation in a wide range of aggressive tax planning arrangements.*

**5. GST/ITC- This question was not addressed by the CRA.**

A GST/HST ITC is deemed by S 248(16) to be government assistance, which means it is income under S 12(1)(x) absent an election to offset it against a related expenditure or the cost of a related asset. This appears to mean that a taxpayer incurring a \$200 meal cost + \$10 GST, with a \$5 ITC, would have a \$210 meal cost, only half of which is deductible, and a \$5 income inclusion for government assistance, so a net \$100 deduction, being half of the expense net of GST.

However, the taxpayer could elect under Subsection 12(2.2) to offset the assistance against the expenditure, in which case he would have a meals cost of  $\$210 - \$5 = \$205$ , of which half is deductible, for a deduction of \$102.50.

This is alluded to in TI 2009-030929117, which indicates GST recovered would be taxable "unless the taxpayer makes an election under subsection 12(2.2) of the Act to exclude the amount of any ITC received from income which would otherwise be taxable pursuant to paragraph 12(1)(x) of the Act."

What is the CRA's policy regarding the treatment of GST recovered as an ITC? Specifically:

- (a) Does the CRA agree that an election under 12(2.2) would effectively permit the taxpayer to deduct half of the GST/HST on meals or entertainment costs not recovered as an ITC?
- (b) Similar elections under Subsections 13(7.4) and 53(2.1) permit the taxpayer to reduce the cost of depreciable and non-depreciable capital property by the amount of related government assistance, rather than including that assistance in income. In practice, many taxpayers automatically reduce the cost of these assets for GST/HST ITC's with no election filed. Does the CRA accept this approach, or does the CRA consider these ITC's to be income (and the cost of the related property



to include GST/HST paid) where an election is not filed?

- (c) Where an election under any of the three provisions referred to above is desired, assuming CRA requires an election be filed, would CRA accept:
- i. a one-time election to apply each provision to all relevant GST/HST recovered as an ITC?
  - ii. an annual election to apply each provision to all relevant GST/HST recovered as an ITC?
  - iii. only a separate election for each expenditure/ITC incurred in each year?

**CRA Response:**

*This question was not addressed by the CRA.*

**6. Liaison Officer Initiative (LOI)**

The following questions are in respect of the new LOI program which is part of the CRA's new three-point plan to help certain businesses meet their tax obligations:

- 1) How are businesses selected for participation? Which industries/types of taxpayers are currently being invited to participate?
- 2) What happens if a taxpayer does not respond to an invitation?
- 3) When will a decision be made on whether the pilot project will turn into a permanent project?
- 4) Despite CRA assurances that information obtained under the LOI will not be used to select taxpayers for audit or reassessment, there is still concern in the tax community. What is the CRA policy with regards to the documentation of observations by an agent during a visit? (Is anything recorded? Who can see it? When does the information get discarded?)

**CRA Response:**

*Participating CRA offices in the Prairies region are inviting taxpayers who provide services to buildings and dwellings to participate in the LOI. This industry code includes janitorial services, exterminators, chimney cleaners, and window cleaners. A team in Ottawa provides the local CRA offices with lists of taxpayers in this sector who may be at risk of some non-compliance that we feel would be best addressed through assistance.*

*Taxpayers are introduced to the LOI by mail and then contacted by phone and invited to participate in the program. Participation is voluntary. If a taxpayer advises the CRA that they do not wish to participate in the program, no further contact is made.*

*The recent Federal Budget included a statement establishing the LOI as a permanent program. The LOI is an educational program. The limited information gathered as part of this program is kept separate from other CRA databases and is kept for statistical purposes only and will be analyzed for monitoring the success of the program only. No information in respect of the taxpayer's financial statements or any tax filings is retained and no leads are made to our audit programs. The LOI program's objective is to educate taxpayers and help them correct mistakes.*

## INCOME TAX QUESTIONS

### 1. Trusts and Estates – Recent Legislative Changes-This question was not addressed by the CRA.

The legislative changes to the taxation of trusts which will come into effect in 2016 have created many questions for practitioners.

#### Part I

The following questions are in relation to the new definition of Graduated Rate Estates (“GRE”):

Consider the situation where a taxpayer dies on July 31, 2016 and his non-registered assets have a FMV of \$3,000,000. The will stipulates that 3 trusts are to be set up for 3 different beneficiaries. Will the Estate, prior to the transfer of assets into the testamentary trusts, be the only one which can be designated as a GRE? Or, can one of the testamentary trusts arising from the will be designated as the GRE?

An individual dies with two relevant Wills. Is the CRA of the view that there can be multiple estates of an individual, can the CRA please provide examples or circumstances where more than one estate may exist. Or, will all of the assets, regardless of the number of wills, be considered a single estate?

We appreciate the comment in the Department of Finance Technical Notes that states that the Tax Act is predicated on the view that there is only one estate upon the death of an individual. However, traditionally, multiple T3 returns have been filed by practitioners (one for each set of assets). Can the CRA provide comments on this traditional practice and provide comments on how such multiple wills need to be coordinated into one T3 filing?

#### Part II

Subsections 104(13.1) and 104(13.2) permit a trust to designate a portion of its income for a taxation year as not having been paid or become payable to its beneficiaries, with the result that the designated amounts are not included in the income of those beneficiaries but are instead included in the income of the trust. New subsection 104(13.3) restricts the ability of a trust to designate a portion of its income for a taxation year pursuant to subsection 104(13.1) and 104(13.2) such that a designation under those subsections is invalid if the trust’s taxable income for the year (calculated without including amounts subject to the designation) is greater than nil.

The calculation of taxable income of a trust for a particular taxation year takes into account losses that have been carried back to reduce the trust’s taxable income from a subsequent taxation year of the trust. In a circumstance where a loss is carried back from a subsequent taxation year, the taxable income for the particular taxation year could therefore become a loss. The determination as to whether a designation under subsection 104(13.1) or 104(13.2) made with the initial filing of the T3 Trust Return for the particular taxation year could not consider the impact of the loss carryback from a subsequent taxation year. Therefore, at the time when the T3 Trust Return was filed for the earlier year, subsection 104(13.3) may have prevented a designation being made by the trust under subsection 104(13.1) or 104(13.2).

In order to permit the appropriate application of a loss carryback, would the CRA confirm that it is possible for the trust to make a late or an amended designation pursuant to subsection 104(13.1) and 104(13.2) for the particular taxation year in order to permit the utilization of subsequent losses being

carried back to the particular taxation year?

### Part III

New subsection 104(13.4) addresses the income of a spousal and common-law partner trust, alter ego trust or joint spousal and common-law partner trust for the taxation year that is deemed to end on the date of the particular beneficiary's death and deems this income to be payable to the particular beneficiary with the result that all of the trust's income for the particular year is included in the particular beneficiary's income for the year ending on their death.

A loss realized in a subsequent taxation year of a spousal and common-law partner trust, alter ego trust or joint spousal and common-law partner trust that is carried back to reduce the taxable income for the year ended on the particular beneficiary's death should reduce the income that is deemed by new subsection 104(13.4) to be deemed to be payable to the particular beneficiary in the taxation year that ends upon the death of the particular beneficiary.

Would the CRA confirm that the amount of the trust's income that is deemed by subsection 104(13.4) to have become payable to the beneficiary will be reduced by the amount of any losses realized by the trust in a subsequent taxation years that are carried back to such earlier taxation year? Alternatively, would the CRA permit a designation under subsection 104(13.1) or 104(13.2) to reduce the income taxable to that beneficiary, instead retaining it in the Trust to be offset by the loss carried back? In these circumstances, what is the appropriate filing to be made by the trust and the particular beneficiary's estate to amend the income inclusion to the beneficiary that is deemed by subsection 104(13.4)?

#### CRA Response:

*This question was not addressed by the CRA.*

## **2. Represent a Client**

At prior Round Tables, most recently Question 1 in 2011, CRA indicated it plans to expand the information available through its electronic services to assist with the preparation of capital dividend account (CDA) reconciliations. Question 20 of the 2010 version of this Round Table confirmed CRA would provide a single confirmation of the CDA balance on written request, as a courtesy only. They also noted physical copies of prior confirmations may be requested by telephone contact to the Business Window. Members report longer turnaround times for these confirmations, presumably indicating resource constraints in this area.

Posting CDA confirmations when issued by CRA in the correspondence section of the My Business Account/Represent a Client system, even on a go forward basis (i.e. 2015 and subsequent), would reduce the resources required for CRA dealing with written and telephone requests. It would also reduce time spent by CRA, taxpayers and their advisors in dealing with elections filed based on inaccurate CDA balances – few tax preparers are unaware of Represent a Client, while CRA's confirmation process seems much less well known. Making this information available electronically also seems consistent with CRA's ongoing commitment to reducing red tape.

Can the CRA provide updates on progress towards making these documents available electronically?

### CRA Response:

*We are still working out some technical details in the development of a new worksheet to aid taxpayers in calculating the CDA balance. Once this has been finalized, we will be better able to establish a target timeframe for displaying the calculated balance on MyBA. We are aware that this is a highly desired feature amongst the tax preparer community, so we are actively working to expedite implementation. In terms of a general timeframe, we would be looking at implementing no sooner than 2017, since there are still numerous system/technical components to work out.*

### **3. Automobile allowances**

Paragraph 18(1)(r) prohibits the deduction of an amount paid or payable by the taxpayer as an allowance for the use by an individual of an automobile to the extent that the amount exceeds an amount determined in accordance with prescribed rules (Reg. 7306), except where amount so paid or payable is required to be included in computing the individual's income.

- (a) There are many types of work-related vehicles and projects that cost the individual significantly more than these limits to operate. In such cases, what documentation or information bases will the CRA accept or consider when determining whether an allowance paid at more than these amounts is non-taxable to the individual?

### CRA Response:

*a) In general, CRA considers the per-kilometre rates prescribed in section 7306 of the Income Tax Regulations (ITR) to be reasonable.*

*In recognition of the fact that in some situations actual vehicle costs could exceed the prescribed rate, a greater amount may be permissible without the allowance being included in the individual's income, as long as supporting documentation establishes that the allowance paid is reasonable and that the allowance is paid only for business use of the vehicle. In order to support the reasonableness of an allowance, a record of all operating expenses such as fuel, repairs, and insurance are required for that particular vehicle, as well as information such as logbooks and/or repair invoices that document the total kilometres driven on that vehicle. These records can be in either paper or a standard electronic format that will be easily accessible if the CRA requests supporting documentation from the taxpayer (employer/payer).*

*It is also important to note that an individual cannot be reimbursed for expenses and receive an allowance related to the same use of the same vehicle. (This does not apply to situations where toll or ferry charges or supplementary business insurance are reimbursed, if the allowance is determined without taking these reimbursements into account.)*

*Although rates prescribed in section 7306 of the ITR represent the maximum amount that can be deducted as business expenses as allowances paid for automobile use, these rates can be used as a guideline for the purposes of determining whether there is a taxable benefit to the employee. Reasonable allowances do not need to be included in income when the individual completes their income tax and benefit return.*

- (b) Where an allowance exceeds the prescribed amounts, does the CRA consider the entire allowance is non-deductible, or only the portion in excess of the prescribed amounts? The wording “to the extent the amount exceeds” could be interpreted as only the excess amount would be non-deductible. However, some members have reported CRA proposals to disallow the full allowance.

**CRA Response:**

*b) As stated in the Employers' Guide – Taxable Benefits and Allowances (T4130 (E) Rev. 14), if an allowance paid is in excess of a prescribed amount it will not be considered reasonable for the purposes of determining taxable benefits and is taxable to the employee. As the full amount of the allowance will be included in the employee's income in these circumstances, the allowance is deductible in full by the employer, subject to section 67. The reasonability of allowances in excess of prescribed amounts can be considered in some circumstances. (Refer to the answer provided in (a).) Where an allowance paid in respect of an automobile exceeds the prescribed amount but is considered reasonable for the purposes of determining whether there is a taxable benefit to the employee, the deduction to the employer will be restricted to the prescribed amount.*

- (c) Where an allowance is paid to an individual who is not an employee, or to a person who is not an individual (such as a corporation), does the CRA perceive any circumstances where that amount would not be required to be included in the recipient's income, such that the payer's deduction would be restricted?

**CRA Response:**

*c) Note that paragraph 18(1)(r) would not apply to an allowance paid to a corporation. Normally, a vehicle allowance is paid to an employee or other officer of a corporation in the performance of their duties in earning income on behalf of the corporation.*

*If the automobile allowance is paid to an individual who is not an employee, generally one could presume that these payments form part of payments for services provided and would be business income to the payee. For the payor, the amounts paid are treated in a similar manner to other expenses incurred by the payor. The expenses would have to be incurred for the purpose of earning income from a business and be reasonable under the circumstances. Whether the amount paid is included in the payee's income, however, is dependent on the circumstances of the recipient of the allowance insofar as whether it is received in respect of a source of income.*

**4. Costs of Objection or Appeal-This question was not addressed by the CRA.**

In document # 2014-052419117, the CRA acknowledged that paragraph 60(o) does not restrict deductions for costs of an objection or appeal to the taxpayer's own costs but includes costs awarded by the Court following an unsuccessful appeal. The provision permits the taxpayer to deduct “fees or expenses incurred in preparing, instituting or prosecuting an objection to, or an appeal in relation to, an assessment of tax, interest or penalties under this Act”, as well as other assessments and decisions. It does not appear the legislation requires the assessment be issued to the taxpayer that incurs the legal costs.

Does CRA agree that a taxpayer paying costs of Objection or Appeal for a different taxpayer would be entitled to deduct those costs pursuant to paragraph 60(o)? This situation arises in practice where a group of taxpayers facing similar reassessments agree to jointly fund the costs of an appeal in respect of a single taxpayer among themselves where that taxpayer advances the appeal as a test case.

**CRA Response:**

*This question was not addressed by the CRA.*

**5. Charitable Gift of Preferred Shares of a Private Corporation-*This question was not addressed by the CRA.***

Assume an individual (“Donor”) wishes to make a sizable donation to charity, but whose wealth is held in one or more Canadian-controlled private corporations (CCPC’s). Donor exchanges his common shares of CCPC for shares of two classes, being (i) non-voting preferred shares (“Prefs”) having a redemption price and fair market value (“FMV”) of \$500,000 and, (ii) new common shares of a different class.

The individual donates these shares to a registered charity. The donation is an “excepted gift” as defined under Subsection 118.1(19). The individual receives no advantage which would reduce the eligible amount of the gift. The Charity issues a donation receipt, and retracts the preferred shares, receiving cash equal to the redemption amount.

- (a) It appears that the “eligible amount” of the gift, as defined in Subsection 248(31), is equal to the redemption amount of the preferred shares. Please confirm the CRA agrees, or set out the technical basis for CRA’s disagreement.
- (b) Assuming the taxpayer held the common shares of CCPC for at least three years prior to the transactions, and did not acquire them with the purpose of making a gift of them to a qualified donee, it appears that the Pref’s FMV is not deemed equal to their cost pursuant to Subsection 248(35) (based on the terms of Subsection 248(37)). Again, please confirm the CRA agrees, or set out the technical basis for CRA’s disagreement.
- (c) Assume that Donor and the CCPC file a joint election pursuant to Subsection 85(1) of the *Income Tax Act*, electing an Agreed Amount of at least \$500,000, such that the Pref’s will have an Adjusted Cost Base equal to their FMV, it appears that the provisions of Subsection 248(35), if they were applicable, would result in the FMV of the Pref’s being equal to their \$500,000 FMV. Again, please confirm the CRA agrees, or set out the technical basis for CRA’s disagreement.
- (d) Would the CRA’s response to (c) be different if the Donor offset the capital gains realized with either capital losses from other properties or a claim for the Capital Gains Deduction?
- (e) Finally, does the CRA perceive any issues in such a structure which would cause them to assert that Subsection 248(38) would apply, in the absence of other facts which might lead to a concern of abuse?

**CRA Response:**

*This question was not addressed by the CRA.*

**6. Direct Deposit for T1 Refunds**

We are aware that the Government of Canada wishes to migrate taxpayer refunds over to direct deposit, and perhaps even to stop mailing refund cheques by April, 2016.

- (a) While a taxpayer who has registered with the CRA for the “My Account” service is able to go into the CRA system and determine the banking information, if any, on file with CRA, we are unaware of any way for representatives to determine if a client is registered. We appreciate the need to keep banking information confidential, however could the “Represent a Client” portal indicate whether there is Direct Deposit information on file for the taxpayer, with limited (e.g., last few digits of account) or no account data? It would seem that all we can do is submit banking information as “new deposit request or to change account information” for every client wishing to participate, rather than “telling you once”. Clients engage representatives to deal with CRA on their behalf – they will not call the CRA on our behalf.

**CRA Response:**

*Please note that this is not being considered. This type of information is available only to the legal rep or the taxpayer. This also includes the suggestion above that the CRA simply indicate that there is DD information on the account without providing details to the representative.*

**Follow-up Question**

The accounting community would like the CRA to consider their request in regards to questions 6(a) Direct Deposit for T1 Refund. Our response indicated that the CRA is not considering adding any information through “rep a client” in regards to the client having Direct Deposit (DD) information on file or not. The response does not indicate if it is for legal reason or not. The accounting community feels that simply adding a check mark or some sort of indication that there is or not DD on file would be useful and right in line with the Red Tape Reduction Initiative.

**CRA Response:**

*The area responsible for this information has confirmed that such an option is not under consideration at this time, but it may be reviewed in the future.*

- (b) According to the FAQ at <http://www.tpsgc-pwgsc.gc.ca/recgen/txt/faq-eng.html>, “Although April 2016 is the government’s target date for Canadians to enrol in direct deposit, those who are not enrolled by that date will continue to receive cheques.” Can CRA confirm they will continue to issue cheques for refunds (and/or GST/HST credit, Canada Child Tax Benefit and other payments) after March 31, 2016 (or some other date) where direct deposit information has not been provided? It seems there are many reasons taxpayers would be reluctant to provide banking information, including concerns about data security (CRA’s systems, accountants’ and/or transmissions), changes of bank accounts (e.g. Canadians who live a transient lifestyle) or simply difficulty accessing banking facilities (a concern for low income Canadians).

### CRA Response:

*The Canada Revenue Agency (CRA) will continue to issue cheques to Canadians beyond April 2016 and we would like to reassure you that payments which Canadians currently receive by cheque will continue. The CRA will, however, continue to encourage Canadians to enrol in direct deposit as it is a faster, more convenient, reliable, and secure way to get their income tax refund and credit and benefit payments directly into their account at a financial institution in Canada.*

- (c) Many of our members have experienced a reluctance of CRA representatives to accept evidence of payments by electronic banking, rejecting such claims because cancelled cheques or similar documents are unavailable. Can CRA confirm that this initiative signals a new acceptance of CRA of the acceptability of electronic banking, or are the efficiencies of this approach to be restricted to CRA, and denied to taxpayers?

### CRA Response:

*The CRA is committed to developing and supporting electronic payment options which include providing quality service to meet our client's needs. The development of MyPayment in conjunction with our online banking partners and our direct deposit initiative demonstrate our acceptance and conviction to adopting online services for our clients.*

*If an electronic payment has not been credited to a taxpayer's account the CRA will attempt to trace the payment and sometimes will require proof of payment from the taxpayer or representative. While we acknowledge that electronic payments cannot be proven with a copy of a cheque, proof of an electronic payment is available.*

*Proof of an electronic payment made either through the taxpayer's online banking or through MyPayment would be a bank statement or a print of the account details screen from the taxpayer's online banking site that show the payment transaction. Both of these would show the date, the amount and the recipient of the online transaction.*

## **7. Legal Address**

A CRA representative recently confirmed to one of our members that, in addition to the various addresses (physical, mailing, books & records) visible on Represent a Client, the CRA also has a "legal address" which is attached to the basic nine-digit business number.

The member in question noted this was discovered accidentally in the course of submitting RC59's for their client base due to a change in their firm name. Most of the problematic legal addresses were those of the firm itself, which suggests their address may also be used to correspond regarding former clients who no longer wish them to act on their behalf, which seems to risk violations of taxpayer privacy. A CRA representative advised the client that returned mail from "legal addresses" is not uncommon.

This legal address is not available on Represent a Client, as it is not attached to a program suffix (e.g. RT0001). The editor of this question reviewed his own "View Address" page, for three separate legal entities, through My Business Account. No "legal address" was reflected for any of those entities. It



appears that only CRA can access this. At present, it seems even the existence of this address on CRA's records is virtually unknown to taxpayers and their advisors.

Please confirm the purpose and use of this "legal address." Can the CRA make this address available to be seen online by taxpayers and their representatives, so that they will be aware that it may require updating when there is a move, etc.? Even if it then required a separate letter from the business owner, at least they, and we, would be aware they need to do something.

**CRA Response:**

*This is in reference to the address of the "Legal Entity." Essentially the system allows the input of an address for the Legal Entity (BN9) in addition to address updates for each specific program account. So the Legal Entity addresses (i.e. physical and mailing) can be completely different than the physical and mailing addresses for each program account. Section A of the RC1 is for the BN9. The subsequent sections (Part B and forward) are specific for program accounts. You can input different addresses in each of those sections.*

*Secure Portals Operations Section has confirmed that the legal entity address does not display as an option to update when a user requests change of address. They have also confirmed that this enhancement has been requested; however, there is no ETA at this time.*

**8. Business Registration Online**

Has there been any progress on allowing accounting (or law) firms to use Business Registration Online to register and open business numbers for new corporations and other businesses? Can CRA advise why professional service firms are restricted to a single registration annually? This restriction is inconsistent with the "Red Tape Reduction" initiatives to expand and enhance electronic services.

**CRA Response:**

*The removal of the restriction limiting users on the amount of registrations they can do in BRO applies to all users. This includes professionals such as accounting and law firms.*

*In a sense it was made specifically to answer a need expressed by accounting and law firms.*

**9. Audit Selection**

- a) Can CRA provide an update on their current audit selection process?
- b) The term "business intelligence" has appeared in a lot of CRA documents in recent years, including the January 17, 2014 Small Business Compliance three point plan. Can CRA clarify how BI has changed, or is changing, the audit selection process?
- c) What proportion of audits are selected using BI techniques, as compared to third party leads or random sampling?
- d) How is BI used in selecting individual taxpayers to question on personal income tax claims?

Is there currently an Edmonton, Prairie Region or National Project to examine potential personal service businesses? Can CRA indicate how, if at all, BI is used to identify potential personal service business issues?

**CRA Response:**

*The CRA continues to focus its audit resources on files with the highest risk and it does so through business intelligence. Business intelligence (BI) emphasizes that CRA increasingly leverages internal and external information sources, research results, and our data processing capacity in order to continuously improve the Agency's ability to identify and address non-compliance through audit, improve our risk assessment system, and inform our use of innovative approaches to improve compliance.*

*Business intelligence is used in selecting files for audit, with a few notable exceptions such as research audits and consequential adjustments, and identifying the appropriate treatment for particular groups of taxpayers, including those participating in Industry Campaign Approach, Letter Campaigns, and Liaison Officer Initiative.*

**10. Prohibited Investments- This question was not addressed by the CRA.**

The consequences of holding a "prohibited investment" (PI) in a registered plan are severe. Paragraph (d) of the subsection 207.01(1) definition includes "prescribed property", which is defined by Regulation 4900(15). Regulation 4900(15) provides that property which is a "qualified investment" (QI) solely because it qualifies under Regulation 4900(14) will be prescribed property if, at any time, it is not described in Regulation 4900(14)(a)(i),(ii) or (iii)

Regulation 4900(14)(a)(i) provides that shares of the capital stock of a "specified small business corporation" are prescribed as qualified investments for an RRSP, RRIF, or TFSA. The other two subparagraphs are not relevant to this question. The definition of "specified small business corporation" contained in Regulation 4901(2) can be satisfied at any particular time if the corporation satisfies a modified definition of "small business corporation" (MSBC) either at that particular time, or at the end of its most recent previous taxation year.

Assume that PrivateCo has a December 31 fiscal year end and, at December 31, 2014, meets the definition of an MSBC.

Does CRA agree that PrivateCo's shares continue to meet the criteria of Regulation 4900(14)(i) until its next year end, and therefore cannot become prescribed property, nor a PI, prior to its December 31, 2015 year end? Alternatively, does CRA interpret Regulations 4900(14)(a)(i), 4900(15) and 4901(2), taken together, to require PrivateCo to remain an MSBC at all times, such that failing to be an MSBC at any point in time will cause its shares to immediately become a PI?

**CRA Response:**

*This question was not addressed by the CRA.*

**11. Tax Free Savings Accounts- This question was not addressed by the CRA.**

Consider the following hypothetical fact pattern:

1. Husband has accumulated \$50,000 in his TFSA, and has contributed the maximum amount that is

- available to his TFSA.
2. Husband is no longer working, and has a lower marginal tax rate than Wife.
  3. Husband cashes in his TFSA and withdraws the amounts out of his TFSA.
  4. Husband invests the cash in a non-registered account in December, YR 1.
  5. In January, Yr 2, Wife contributes Husband's contribution room, including the \$50k prior year withdrawal, to Husband's TFSA.

Attribution does not apply to funds contributed to a TFSA pursuant to paragraph 74.5(12)(c) of the Act. Does CRA accept that the income on the non-registered investments from the TFSA withdrawal is properly reported by Husband?

**CRA Response:**

*This question was not addressed by the CRA.*

## **12. Payment Alternatives – “My Payment”**

When a taxpayer who has a June 15 filing deadline realizes during April that they owe additional tax for the prior year, and must therefore have that tax paid by April 30 in order to avoid interest charges, it appears they cannot make that payment using the “My Payment” facility without extra work, because the facility does not allow for instalment payments for the prior year – it allows only three choices:

- (1) an arrears or balance owing payment based on an assessment;
- (2) an instalment payment for the current (not prior) year; or
- (3) a payment on filing (and since filing is still perhaps six weeks away it would seem to be incorrect to use this option).

Can the CRA not expand its payment options to include this common occurrence? We have it happen with June 15 filers with some frequency, and are generally forced to have them make a payment to the wrong year and then later phone in and move the payment to the correct year.

**CRA Response:**

*Instalments are intended to pay tax that would be due April 30 of the following year. They are paid in the calendar year in which you are earning income. Instalments are not intended to pay tax for a previous calendar year. So, a prior year instalment payment option is not feasible.*

*Our accounting systems for individuals have an intricate payment logic based on the three tax segments currently available. Adding another payment option on MyPayment would require extensive new system logic to ensure the payments from any new option were allocated correctly. As the CRA is currently going through a massive project to replace the existing accounting system as is, the changes required to the system in order to facilitate a new option is not practical at this time.*

*Perhaps a new payment option could be a future consideration.*

*If a self-employed individual finds they consistently need to make a payment on April 30, they can make voluntary instalment payments during the calendar year that they earn the income.*

### 13. Special Assessments Program

Many taxpayers come to a professional because their affairs are more complex than they can handle directly. The CRA goes to great pains to allow only professionals with consent to act on behalf of taxpayers, and to ensure that this consent has been properly given. Part “D” of the T183 form states, in part: “I authorize the Canada Revenue Agency to deal with the electronic filer named in Part F as my representative for income tax matters on my tax return”.

When a tax return is e-filed, why does the CRA go around professional e-filers by sending out standardized letters directly to taxpayers under the Special Assessments Program? This can often cause significant confusion with taxpayers, especially when the letters request certain types of backup which may have nothing directly to do with the particular matter for that taxpayer.

#### CRA Response:

##### **Special Assessments Program**

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*Information on CRA’s review programs can be found at the following link: <http://www.cra-arc.gc.ca/tx/ndvdl/tpcs/ncm-tx/rvws/menu-eng.html>*

*The reviews conducted during this program can take place before or after a Notice of Assessment has been issued.*

*The Special Assessments Program conducts a more in-depth review of the income tax returns to identify and gather information on trends and situations in areas of non-compliance that may represent a risk to the self-assessment system.*

*All requests for information are sent directly to the taxpayer. This includes taxpayers who have authorized someone to act on their behalf such as a tax preparer.*

*The information that the CRA seeks for these in-depth reviews is typically in the possession of the taxpayer, for example, documents that show proof of payment, statements of income received, or various documents confirming identity. The taxpayer may choose to bring the required documentation to their authorized representative to reply to the CRA’s request. In that instance, the CRA will then interact with the authorized representative for any subsequent contact regarding the review.*

#### Follow-up Question

The accounting community would like CRA to consider sending a copy of the assessment to the one who prepared it (accountant/tax preparer) or perhaps adding a paragraph in the letter saying something like: “if your return was prepared by an accountant, please provide them a copy of this letter for their assistance.” The accounting community feels that a client has already authorized their accountant by the accountant filing the return, and that it only makes sense for them to be kept in the loop. The accountants feel that such an assessment letter can be quite confusing to most taxpayers. As accountants are communicated directly with for other assessment, why is it different with the

special assessment program?

**CRA Response:**

*Thank you for your comments; however, the CRA will not be introducing any changes to the communication methods currently in place for the special assessment program.*

**14. SR&ED**

Consider the situation where a person performs eligible SR&ED support work (which would be consistent with paragraph (d) of the definition of “scientific research and experimental development” found in subsection 248(1) of the Act) in the United States. The amount of salaries for the person performing the work, the “SR&ED wages”, represents less than 10% of the overall SR&ED wages claimed. Therefore, the SR&ED wages for work performed outside Canada should be allowed. However, we understand that had the work performed outside Canada been direct “experimental development” under the definition in paragraph (c) of the definition of SR&ED in subsection 248(1), the amount would have been disallowed. Can CRA please comment if our understanding is correct?

**CRA Response:**

**Answer** – *(References are included below):*

*As with any scenario, it depends on all of the facts. In the scenario presented we understand that the “direct experimental development” referred to is also work done solely in support of SR&ED in Canada. In other words, it is experimental development work (i.e. 248 (1)(c) work) that is an integral part and is solely in support of the SR&ED project work carried on in Canada. If this is the case then the salary expenditures would be eligible subject to the 10% limit.*

*It is our position that salary expenditures for work defined as basic research, applied research, experimental development or SR&ED support work that is performed outside Canada can be claimed subject to the 10% limitation. However the SR&ED work carried on by the employee outside Canada must be an integral part and solely in support of the SR&ED work carried on in Canada.*

*Please refer to section 10 of the SR&ED Salary or Wages Policy for a more complete discussion of this issue.*

\*\*\*\*\*

**References: ITA:**

**1** **(1.4) Salary or wages for SR&ED outside Canada** — *For the purposes of this section, section 127 and Part XXIX of the Income Tax Regulations, the amount of a taxpayer’s expenditure for a taxation year determined under subsection (1.5) is deemed to be made in the taxation year in respect of scientific research and experimental development carried on in Canada by the taxpayer.*

**History**

**i** **(1.5) Salary or wages outside Canada – Limit determined** — The amount of a taxpayer's expenditure for a taxation year determined under this subsection is the lesser of

**i** (a) the amount that is the total of all expenditures each of which is an expenditure made by the taxpayer, in the taxation year and after February 25, 2008, in respect of an expense incurred in the taxation year for salary or wages paid to the taxpayer's employee who was resident in Canada at the time the expense was incurred in respect of scientific research and experimental development,

(i) that was carried on outside Canada,

(ii) that was directly undertaken by the taxpayer, (iii) that related to a business of the taxpayer, and (iv) that was solely in support of scientific research and experimental development carried on in Canada by the taxpayer, and

(b) the amount that is 10 per cent of the total of all expenditures, made by the taxpayer in the year, each of which would, if this Act were read without reference to subsection (1.4), be an expenditure made in respect of an expense incurred in the year for salary or wages paid to an employee in respect of scientific research and experimental development that was carried on in Canada, that was directly undertaken by the taxpayer and that related to a business of the taxpayer.

## **History**

### **Policy Document Excerpt:**

#### **SR&ED Salary or Wages Policy:**

#### **10.0 Salary or wages of employees carrying on SR&ED outside Canada**

Claimants can earn SR&ED investment tax credits (ITCs) on permissible salary or wages for SR&ED work carried on outside Canada after February 25, 2008.

The SR&ED work carried on outside Canada must be directly undertaken by the employees of the claimant, and must form part of the SR&ED carried on in Canada by the claimant. Permissible salary or wages incurred by a claimant in a tax year is limited to 10% of the total of salary or wages for the SR&ED carried on in Canada.

The permissible salary or wages for the work carried on outside Canada is deemed to be an expenditure made in Canada by the claimant. Accordingly, such expenditures qualify for the SR&ED ITC and are excluded from the application of the rules for SR&ED carried on outside Canada for which no ITC can be earned.

#### **Legislative references Income Tax Act**

Subsection 37(1.5) Salary or wages for SR&ED outside Canada – Limit determined

Subsection 37(2) Research outside Canada

#### **10.1 Calculation of permissible salary or wages for SR&ED work carried on outside Canada**

In order to determine the amount that can be claimed as the permissible salary or wages for

SR&ED carried on outside Canada, claimants will first have to calculate the two amounts A and B below. The lower of **amount A** or **B** can be claimed as the permissible salary or wages for SR&ED carried on outside Canada.

**Amount A – Total of salary or wages for SR&ED work carried on outside Canada**

The salary or wages that can be claimed for SR&ED work carried on outside Canada must meet the following criteria:

- the costs were incurred after February 25, 2008;
- the SR&ED work was directly undertaken by an employee of the claimant and not performed by a contractor;
- the employee who performed the SR&ED work was a resident of Canada at the time the expense was incurred;
- the work was related to a business of the claimant;
- the SR&ED work carried on by the employee outside Canada was an integral part and solely in support of the SR&ED work carried on in Canada (see section 10.2.1); and
- the salary or wages paid were not subject to income or profits tax from another country (see section 10.2.2).

**Amount B – 10% of the total of SR&ED salary or wages for SR&ED carried on in Canada**

This limit is calculated as 10% of the total salary or wages claimed for SR&ED carried on in Canada (see section 10.2.3). Note: Although the Income Tax Act refers to an expense incurred in the year for salary or wages **paid** to an employee in respect of SR&ED, it is the practice of the CRA to use the amount on line 306 of Form T661 (**expenditure incurred**) for the purposes of determining the 10% limit.

For the tax year that includes February 26, 2008, the 10% limit is prorated based on the number of days after February 25, 2008, that are in that tax year over the total number of days that are in that tax year.

The formula is:

$(\text{Number of days in the tax year after February 25, 2008}) / (\text{Total number of days in the tax year})$

**Legislative reference Income Tax Act**

Subsection 37(1.5) Salary or wages outside Canada – Limit determined

**10.1.1 Example**

Company A's tax year end is September 30, 2008. Company A claimed one SR&ED project carried out in Canada during the tax year. Company A has five employees (other than specified employees) performing SR&ED and each are paid \$9,000 per month. All employees are working 100% of their time on the SR&ED project and they all reside in Canada. Company A's SR&ED salaries for 2008 tax year are \$540,000 (\$9,000 x 12 months x 5 employees = \$540,000).

Employee 1 performed SR&ED work outside Canada in November 2007 (30 days) Employee 2 performed SR&ED work outside Canada in March 2008 (31 days).

*The permissible salary for work carried on outside Canada is the lesser of A or B:*

**Amount A – Calculated**

*\$9,000 – Eligible salary for Employee 2 only as Employee 1 performed SR&ED work before February 25, 2008.*

**Amount B – Calculated**

*\$31,092 (total salary or wages for SR&ED performed in Canada) x (10%) x (proration for the number of days in the tax year after February 25, 2008 / total number of days in the tax year) (\$540,000 - \$18,000) x (10%) x (218 / 366)*

*Based on the above calculation, the amount that can be claimed as salary or wages for work carried on outside Canada on line 307 of Form T661, Scientific Research and Experimental Development (SR&ED) Expenditures Claim, is \$9,000.*

**10.2 Applying the rules**

**10.2.1 Meaning of "solely in support"**

*The SR&ED work carried on outside Canada by the claimant that is basic research, applied research, experimental development or work described in paragraph (d) of the definition of SR&ED in subsection 248(1) of the Act would qualify as being "in support" provided the work is an integral part and is solely in support of the SR&ED work carried on in Canada by the claimant.*

*The question whether an activity performed outside Canada is solely in support of the SR&ED work carried on in Canada is a question of fact to be determined on a case by case basis.*

- Where an activity is in support of both an SR&ED project carried on in Canada **and** another SR&ED project carried on outside Canada, that activity would not be considered to be solely in support of the SR&ED work carried on in Canada.*
- Where an activity performed outside Canada supports work that involves SR&ED carried on in Canada **and** at the same time supports non SR&ED work (dual purpose activity) performed in Canada, that activity would not be considered to be solely in support of the SR&ED work carried on in Canada.*

**10.2.2 Salary or wages paid were not subject to income or profits tax from another country**

*Salary or wages paid to an employee for SR&ED work carried on outside Canada can be included as permissible salary or wages only if the claimant reasonably believes that the salary or wages is not subject to an income or profits tax imposed, because of the employee's presence or activity in a country other than Canada, by the government of that particular country.*

*This rule takes into account only those taxes that are applied because of an employee's presence or activities in a foreign country—and not, for example, a tax that applies to a country's citizens regardless of where they live or work.*



*To determine whether the salary or wages paid to an employee for work performed outside Canada is subject to an income or profits tax imposed by a foreign government, the claimant should consider the tax treaty between Canada and the foreign country in which the SR&ED work in support of the SR&ED in Canada is performed.*

*Usually salary or wages paid to an employee for SR&ED work carried on outside Canada can be included as permissible salary or wages if the employee sojourns only a short period of time in the foreign country. As stated in paragraph 25 of Interpretation Bulletin IT-270R3, foreign tax credit:*

*The location of the source of an individual's office or employment is considered to be the place where he or she normally performs the related duties. If those duties require the individual to spend a significant part of the time in a country other than Canada, the individual may be subject to tax in that foreign country on a portion of the remuneration.*

*However, it is a question of fact whether salary or wages paid to an employee is not subject to an income or profits tax imposed by a foreign jurisdiction. The onus is on the claimant to make this determination. If this condition is not satisfied—for example, if the claimant knows or has reason to believe that the amount is being taxed in the foreign country where its employees are carrying out the SR&ED—salary or wages paid to the employee would not be included in the amount of the permissible salary or wages (see section 10.1).*

### **10.2.3 Determining amount B – Limit**

*Amount B is calculated as 10% of the total salary or wages claimed for SR&ED carried on in Canada.*

*The 10% limit is calculated on the total allowable salary or wages for SR&ED in Canada and not only on the salary or wages relating to the project(s) carried on in Canada that the work outside Canada solely supports.*

*For example, if the claimant carries out two SR&ED projects in Canada and testing outside Canada is required for one of the projects, the total salary or wages expenditures for SR&ED in Canada is taken into account for the calculation of the 10% limit.*

*Under the traditional method, Amount B can include the portion of other salary or wages of employees who directly undertake, supervise, or support the SR&ED that can be claimed as SR&ED overhead and other expenditures on line 360 of Form T661 (salary or wages of employees not directly engaged in the prosecution of SR&ED). See Table 5 in the T4088, Guide to Form T661 Scientific Research and Experimental Development (SR&ED) Expenditures Claim, for examples of such tasks.*

*Other salary or wages that are considered SR&ED overhead and other expenditures, such as the salary or wages of clerical staff providing a service to SR&ED employees claimed on line 360 of Form T661, are not included in the total salary or wages for the purpose of calculating the 10% limit.*

### **Legislative reference Income Tax Regulation**

*Paragraph 2900(2)(b) Employee remuneration – Traditional method*

### **10.3 How to calculate permissible salary or wages for work carried on outside Canada for Form T661**

*The calculation of permissible salary or wages for SR&ED work carried on outside Canada (see section 10.1) is determined with respect to the total amount of salary or wages for the SR&ED inside Canada. The calculation does not distinguish between specified employees and employees other than specified employees.*

*However, the way Form T661, Scientific Research and Experimental Development (SR&ED) Expenditures Claim, is structured, the total amount of permissible salary or wages for SR&ED outside Canada should be allocated between employees other than specified employees (line 307) and specified employees (line 309). The total of lines 307 and 309 cannot exceed 10% of the total amount of salary or wages for the SR&ED inside Canada (line 306 of Form T661).*

*Thus, when an amount is claimed on line 307 of Form T661 (for other than specified employees) the amount that may be claimed on line 309 (for specified employees) cannot exceed: 10% of the amount on line 306 of Form T661 less the amount claimed on line 307.*

#### **Legislative references** *Income Tax Act*

*Subsection 37(1.4) Salary or wages for SR&ED outside Canada*

*Subsection 37(1.5) Salary or wages for SR&ED outside Canada – Limit determined*

*Subsection 37(2) Research outside Canada*

*Subsection 37(9) Remuneration based on profits or bonus for specified employees*

### **Random Questions**

1. Is it necessary to fill out the T183 authorization if there is already a T1013 on file for that individual? There seemed to be a lot of confusion as to why this form would be needed and the difference between T183 and T1013.

#### **CRA Response:**

*A T183 form is required for each T1 return filed electronically. The T183 form gives the electronic filer permission to transmit the taxpayer's return electronically to the CRA using our EFILE system. The T183 form is required regardless if a T1013 form is on file for the taxpayer in question. The T1013 form is used to authorize or cancel a representative on a taxpayer's account. This form is required if the taxpayer wants the CRA to deal with another person as their representative for income tax matters. One form gives permission to electronically transmit the T1 return (T183) to the CRA and the other form authorizes a representative to deal with CRA on the taxpayer's behalf (T1013).*

2. It was mentioned that the tax preparers/accountants having "represent a client" access can transfer misallocated payments directly through MyBA. Will the same option be available through My Account in the near future?

#### **CRA Response:**

*The area responsible will do more research to determine if certain type of payments can be transferred by reps in the portal and will get back to us.*

# GST Questions

## 1. Effective date on form RC4616 Election under section 156

We have received conflicting reports on what to indicate as an effective date of the election where the parties previously maintained a GST25 form on file.

Our latest information from the CRA is that they want the original effective date of the GST25 election provided on the form RC4616. If there are multiple effective dates, the CRA will accept an effective date of December 31, 2014.

Where the GST25 is in place, the deadline to file the RC4616 is December 31, 2015.

Often organizations cannot locate the original GST25 forms, whether or not there are multiple effective dates. Therefore, even where organizations do not have multiple effective dates, they are not certain on the original effective date. They will likely indicate December 31, 2014 or January 1, 2015 as the effective date on the RC4616.

Will the CRA be assessing for uncollected GST where the effective date on the RC4616 is “administratively incorrect”?

### CRA Response:

*Issue No. 95 of the Excise and GST/HST News provided information on the simplified filing procedures concerning existing elections for nil consideration under section 156 of the Excise Tax Act (ETA). Specifically, specified members of a qualifying group that have existing elections, each with a different effective date that is before January 1, 2015, only need to file one Form RC4616 indicating December 31, 2014 as the effective date (covering all members instead of each filing separately). Each Form GST25 that was completed when each election was made should be kept with the electing members' books and records and reflect the original effective date of the election. The common effective date of December 31, 2014, specified on Form RC4616, will be recorded in the CRA's systems and will not invalidate the application of the election for supplies made before that date.*

*For periods prior to 2015, we will apply the administrative policy as indicated in paragraphs 31 and 32 of the GST/HST Memoranda Series 14.5 - Election for Nil Consideration, which provided the following election procedures and CRA administrative policy:*

*The election must be made jointly by the specified members of the qualifying group who are parties to the election by completing Form GST25, Closely Related Corporations and Canadian Partnerships – Election or Revocation of the Election to Treat Certain Taxable Supplies as having been made for Nil Consideration and specifying the day on which the election becomes effective. Registrants are not required to file Form GST25 with the CRA, but must retain a copy of the completed election form with their books and records.*

*If the parties have conducted themselves as if an election were in place and all conditions for making the election were met during the period since the effective date, specified members may make the election with an effective date prior to the date of signing the*

*election form.*

## **2. Rebates**

More and more rebates are being rejected by the processing centre as a result of “lack of documentation.” Despite providing summaries of the amounts being claimed, type 1A and 1C rebates (GST 189) are being rejected as no original documents are provided. There are circumstances that the amount of documents to be provided could be more than four banker’s boxes. Is there a process that can be put in place to avoid the rejection of the claims? Is there a person that can be contacted when these claims are being submitted to advise that the documents are available upon request?

### **CRA Response:**

*An application for a rebate of GST/HST (GST189 form) for the reason code 1A or 1C requires that all documents and information be attached to the claim form. The reason code 1A is for a claim that GST/HST was paid in error for goods purchased or delivered to a reserve and the reason code*

*1C is for a claim that GST/HST was paid in error. Certain other reason codes also have the same requirement. Please see guide RC4033, General Application for GST/HST Rebates for additional information. The documents and information are required to support the claim and are reviewed to confirm necessary information. In order to avoid the rejection of the claim please ensure that all required information and documents are submitted with the GST189 form.*

## **3. Additional information to support claims**

Clients receive requests for additional information to support claims resulting in refunds. We are noting, however, that information being requested by CRA is neither information that would support the claim, nor information that it required under the Excise Tax Act.

For example, a client was asked for copies of supplier invoices “and related cancelled cheques (front and back). Each invoice should show the supplier’s business number and the amount of GST/HST paid or payable”. As CRA is obviously aware, an ITC is available even when GST/HST has been charged but not paid; that is, when tax is “payable.” Cancelled cheques are not required to support an ITC claim, and we have advised clients not to send them in response to these requests.

Secondly, the supplier’s business number and the amount of GST/HST paid or payable is not required on an invoice for less than \$30. While we as practitioners realize that there may be very few invoices for less than \$30, the fact that CRA auditors are asking for information that the legislation does not require to be provided by the purchaser is unsettling.

Recognizing section 286 of the ETA requires that adequate books and records be maintained and that CRA may ask for specific documents in order to “enable the determination” of amounts due or refundable, shouldn’t the information on those documents be limited to what is required by the legislation? Why, then, is CRA’s “Refund Integrity Program” asking for information that is not required by law?

#### CRA Response:

*If you feel that an Examiner is asking for supporting documentation not required under the Excise Tax Act, we encourage you to address this with the Examiner's Team Leader at the time of the examination. Effective January 2014, a requirement for all CRA Audit Staff is to ensure that every letter sent to a taxpayer (registrant) or representative includes the Team Leader's name and phone number. This information is provided for a situation that you have expressed concerns with.*

#### **4. Description of property acquired**

Form GST44, Part C asks for a "description of property acquired" in the sale of business assets. However, when clients complete this part with a description such as "All real property, capital property, intangible assets such as the assignment of all leases and all inventory for the operation of a commercial real estate business", the election is rejected by CRA. CRA's letter states that the description "is not sufficiently detailed to determine if all or substantially all of the business has been acquired."

Given that the client is required to enter a "description", not a detailed listing of all assets bought/sold, why is CRA not accepting elections completed in this manner? What additional information could CRA want, since the client has already said "all property"?

#### CRA Response:

*Subsection 167(1) of the Excise Tax Act specifies that if certain conditions are met an election may be made using the prescribed form containing the prescribed information. The prescribed form is Form GST 44. Part C of the Form GST 44, requires a "description of property acquired" and advises that if additional space is necessary a separate sheet of paper should be attached. The instructions on page 2 of Form GST 44 describe the type of information that should be provided as follows:*

*"List the land, building, equipment, inventory and any other property as defined on this page that has been acquired from the supplier. The list of property is likely described in the agreement between supplier and recipient."*

*As such, a detailed list of all property acquired should be provided in order for CRA to make a determination that all or substantially all of the business has been acquired. For more information please see GST/HST Memorandum 14.4, Sale of a Business or Part of a Business.*

#### **5. Appeals Directorate process**

It is my understanding that the Appeals Directorate is not supposed to discuss the file with the auditor or their team leader. The direction they are given is stated on the CRA website in describing how the objection process works:

"When we receive your objection, the Appeals Division will do an independent impartial review of the assessment. If the chief of appeals agrees with you in whole or in part, we will adjust your return and send a notice of reassessment. However, if the chief of appeals disagrees, we will send you a notice confirming that the assessment was correct."

On the CRA website, this is the description of the ECAS department: The CRA is prepared to offer advice on electronic record-keeping issues and to respond to questions concerning the types of formats that are compatible with the CRA's software. All questions and concerns should be directed to the attention of the Electronic Commerce Audit Specialist (ECAS) at the nearest CRA tax services office. Advice provided by the ECAS must not be construed or viewed as an audit, inspection or a ruling issued by the CRA. It is the person's responsibility to keep, maintain, retain and safeguard its records.

Can you please comment on why the Appeals Directorate is using ECAS auditors who performed the audit in meetings with tax payers and their professional advisors and whether any consideration is being given to having their own specialists in this area so that the process can be respected?

#### CRA Response:

*Effective April 1, 2015 Electronic Commerce Compliance Division (ECCD) was renamed "Electronic Data Support Division" (EDSD). It should be noted that this is a support division that provides advice, technical support, tools, and information related to emerging trends in e-commerce and new technologies, with respect to electronic accounting systems to ensure that the CRA is able to audit taxpayer and registrant businesses that use increasingly sophisticated electronic accounting systems. These support services are provided by Electronic Data Support Specialists (EDSS), formerly known as Electronic Commerce Audit Specialists (ECAS).*

*Unlike the GST/HST and Income Tax auditors, EDSS do not generate any reassessments. At the objection stage, during meetings with taxpayers and their representatives, these specialists, when present, are there to provide technical support and assistance to Appeals officers relating to e-commerce issues. Their role is similar to that of a Valuations expert who provides specialized service to various divisions of CRA.*

*The ultimate responsibility of deciding whether to allow, vary, or confirm an assessment under objection rests with the Appeals Officer. As the EDSS is not the auditor, he/she is invited to participate in meetings at the objection stage to provide specialised support, with the knowledge of the taxpayer and, if applicable, the taxpayer's representatives. There are no plans for the Appeals Branch to have its own electronic commerce specialists or its own specialists in a number of other disciplines where specialized technical expertise is required. It is important to separate the technical specialisation from the ultimate decision-making responsibility.*

#### Follow-up Response:

*We would like to clarify that while appeals officers do not normally discuss the file with the auditor, they may if they need some clarification on something in the audit file, similar to the appeals officer going back to the objector to get clarification on their position. If this happens, the objector should be informed that the appeals officer discussed the file with the auditor.*

## **6. Corporate purchasing**

In large corporate groups the purchasing is generally done by one entity (Corp A) and then journal entries are made to transfer the expense over to the correct entity (Corp B). Corp A claims the ITC and does not charge GST to Corp B as there is a section 156 election in place.

Should there be an invoice issued to support Corp A claiming the ITC as it has made a taxable supply to Corp B?

### CRA Response:

*Under section 169, a GST/HST registrant is generally entitled to ITCs in respect of GST/HST paid or payable on the taxable supply of goods and services **to the extent that the supply is for consumption, use or supply in the course of a commercial activity.** A “commercial activity” of a person, generally, includes a business carried on by the person except to the extent to which the business involves the making of exempt supplies. However, whether a registrant is engaged in commercial activity is a question of fact. The determination of whether a registrant is engaged in commercial activity is made on a case-by-case basis.*

*Where a person pays an amount for a good or service, is the recipient of the supply (i.e., is the person liable to pay for the supply), and is reimbursed by another person, the first person has resupplied the good or service. Where an agency relationship does not exist, the reimbursement of expenses is considered to be a supply of the property or service and will be subject to the GST/HST based on the tax status of the property or service. Where Corp A and Corp B, are closely related, the resupply may not be subject to tax if there is a valid election made under subsection 156(2).*

*In order to claim an ITC a registrant must have the appropriate supporting documentation. Subsection 169(4) requires the registrant to have obtained sufficient evidence in such form containing such information as will enable the amount of the ITC to be determined, including any such information as may be prescribed in the Input Tax Credit Information (GST/HST) Regulations (the Regulations).*

*Where Corp A pays an amount for a good or service and is the recipient of the supply and then resupplied the good or service to Corp B, Corp A should have the documentary requirements under subsection 169(4) and the Regulations to claim the ITCs. The documentation requirements of subsection 169(4) are for the acquisition of the goods by the person claiming the ITC. There is no documentary requirement under subsection 169(4) for the supply between Corp A and Corp B. There should be sufficient documentation or information in the books and records to support that a resupply of the good or service was made.*

### **7. Training service-This question was not addressed by the CRA.**

There is an exclusion from zero-rating for the general services to non-residents (section 6) for services that are rendered to individuals while those individuals are in Canada.

We understand that the CRA was previously taking the position that any training services provided in Canada to employees of non-residents could not be zero-rated under this provision because even though the services were supplied to the non-resident employer, they were also rendered to individuals while they were in Canada. The Invera case ruled that software training was rendered to the corporate employer and not the individual employee. Does the CRA accept this conclusion and is not applying this in practice?

**CRA Response:**

*This question was not addressed by the CRA.*

**8. GST/HST Interpretation 11585-13D- *This question was not addressed by the CRA.***

In GST/HST Interpretation 11585-13D, a partnership (a GST/HST registrant) is wound-up at the close of business on September 29, 1997. Each corporate partner (Corporation A and Corporation B) received their pro-rata share of the assets held by the partnership at the time of the wind-up. Then, Corporation A and Corporation B amalgamated immediately thereafter on September 30, 1997. CRA provided the following interpretation:

... GST/HST will be exigible on the pro-rata distribution of the Partnership Assets to Company A and Company B. However, Company A and Company B will not be eligible to claim ITCs on the GST paid with respect to the distribution of the Partnership Assets. Subsection 271 (c) deems the transfer of property from Companies A and B to Amalco not to be a supply, therefore, there is no tax triggered as a result of this transfer.

At this point, if Amalco uses this property in the course of its commercial activities, it may be entitled to ITCs resulting from an increase in use of the property from nil use in commercial activity to the extent, if any, Amalco uses the property in its commercial activities. ... .”

This ruling raises issues in corporate structuring. QUESTIONS:

- a) Does CRA still follow this ruling? Arguably, Company A and Company B must have carried on the business as a going concern at least for a short period of time.
- b) If CRA follows this ruling, please indicate the minimum acceptable time period from the transfer of assets to Companies A and B and the amalgamation of Companies A and B in order for the ITCs to be allowed?

**CRA Response:**

*This question was not addressed by the CRA.*

**9. There was no question 9 provided.**

**10. Section 167 election- *This question was not addressed by the CRA.***

In the CRA – CBA Annual Meeting, the following question was asked: Can a registrant formed by the amalgamation of a taxable supplier and one or more other companies make a section 167 election in a sale of business assets made following the date of amalgamation? CRA provided the following answer:

Section 167 applies to a vendor which has carried on, established or acquired a business. Section 271(c) provides that the transfer of assets from the predecessors to the amalgamated company is not a supply. Furthermore,



section 271(b) provides for regulations that deem Amalco and predecessors to be the same entity, but the list in the regulations excludes section 167. So, it is arguable that as AmalCo has not “carried on”, “established” or “acquired” any business, it cannot make the section 167 election. The opposing argument is that the deemed “no supply” is not the same as deemed no “acquisition”. Also, AmalCo must have “carried on” the going concern, at least for a scintilla of time.

#### QUESTIONS:

- a) What is CRA’s view on this? Is it CRA’s view that AmalCo has not carried on, established or acquired any business or does it take the position that “no supply” is not the same as “deemed no acquisition”?
- b) If CRA takes the position that AmalCo has not carried on, established or acquired the business, what is the minimum acceptable time period from the initial amalgamation and the subsequent transfer of assets to a third party for the election under section 167 to be held valid?

#### CRA Response:

*This question was not addressed by the CRA.*

#### **11. Bare trust or nominee- *This question was not addressed by the CRA.***

At the Symposium West held in Calgary this year, the structures that could be used to replace a bare trust or nominee corporation in operating a joint venture under section 273 of the *ETA*, there was the suggestion that you could change the nature of the corporation holding title to the real property that was the focus of the joint venture by having it invest a small amount in the joint venture, making it a "participant." It was noted that this will cause the bare trust or nominee to be required to file income tax returns, but the question that remains is this: What is the CRA's position on having a person "operate" a joint venture when it has no employees and does not contract anyone to do the work of managing the joint venture activities? Is the CRA looking to assess JV operators who do not have the ability to manage the joint venture?

#### CRA Response:

*This question was not addressed by the CRA.*

#### **12. Section 296 and Policy 149R**

We are still seeing CRA auditors failing to apply 296(2) when credits are identified by the registrant that have not been claimed before the time of the audit. The suggestion that the registrant can claim the ITCs on a future return is prohibited in the legislation but it is still being offered by CRA auditors. Will CRA Headquarters issue a written policy that identifies the requirement of its staff to comply with section 296 as it is written?

Also, please comment on Policy 149R (which deals with requests by a registrant to have the CRA adjust a previously filed GST/HST return to include ITCs or deductions from net tax) being used by an auditor to support them ignoring the mandate of subsection 296(2). This argument has been put forward by a RIP

audit staff member in refusing to allow ITCs of the "particular reporting period" that were not included on the return that was filed. They say this policy overrides the dictates of subsection 296(2).

**CRA Response:**

296(2)

*When a GST/HST return for a particular reporting period is selected for audit or examination, the auditor or examiner is assessing whether or not the net tax reported by the registrant for the particular period under audit or examination is correct or if a change to the net tax is required based upon all available information and documentation. Since the auditor or examiner is assessing the return, they must take into account any unclaimed input tax credits (ITCs) or allowable deductions for the particular reporting period in the course of determining the registrant's net tax as per subsection 296(2). Please note that The CRA considers the "particular reporting period" to be the reporting period in which the ITC or deduction first became claimable. HQ will remind auditors and examiners of this requirement when assessing net tax.*

**Policy 149R and 296(2)**

*Policy Statement P149 deals with situations where a registrant makes a request to have CRA adjust a previously filed return and does not apply to returns under audit or examination. The Minister is not required to assess all GST/HST returns as per subsection 296(1) and thus is not required to accept all requests for changes to previously filed GST/HST returns. P149 discusses situations where the Minister will accept a request to amend a previously filed GST/HST return and, as a result, assess the return in question. Please note that although correct at the time of issue in 1994 and revised in 1999, P149 has not been updated to reflect legislative changes to section 296.*

**13. ITCs for GST payable**

I recently saw a letter issued by a RIP auditor denying ITCs for GST payable on the purchase of inventory for resale, on the grounds that by selling the inventory to a buyer of the entire business, this sale was not in the course of the "commercial activity" of the seller. With the move of the RIP functions to the smallest TSOs are the proposed assessments issued by the RIP group being reviewed by senior CRA staff with experience in interpreting the law?

**CRA Response:**

*The CRA strives to ensure that all (re)assessments are based on correct law, policy, and procedures. CRA staff receive technical training over the course of their career to ensure that this goal is met. Proposal letters are reviewed by Team Leaders prior to issuance. If you feel that incorrect law or policy is being applied in your situation, we encourage you to contact the Examiner's Team Leader at the time of the examination. As mentioned previously, effective January 2014, a requirement for all CRA Audit Staff is to ensure that every letter sent to a taxpayer (registrant) or representative includes the Team Leader's name and phone number.*

**14. Section 186- This question was not addressed by the CRA.**

Is the CRA in the process of reviewing its position on the meaning of “reasonably regarded...in relation to” in the context of section 186, given the outcome of the Miedzi Copper case? If so, please elaborate on the Agency’s review of its position? If not, please explain.

**CRA Response:**

This question was not addressed by the CRA.

**15. Lease of tangible personal property - This question was not addressed by the CRA.**

We understand that CRA has been reviewing its position on whether a vessel with a crew is considered to be a lease of tangible personal property, or a service, based on a June 1994 ruling letter on the issue. Please provide an update on this policy review and when we can expect some official position (if any) on this potential change in policy.

**CRA Response:**

This question was not addressed by the CRA.

**16. University & Public College Meal Plans – This question was not addressed by the CRA.**

Under section 13 of Part III of Schedule V to the ETA, the following supply is exempt of the GST/HST:

*A supply of a meal to a student enrolled at a university or public college where the meal is provided under a plan that is for a period of not less than one month and under which the student purchases from the supplier for a single consideration only the right to receive at a restaurant or cafeteria at the university or college not less than 10 meals weekly throughout the period.*

“Meal” is not defined in the ETA. The Concise Oxford Dictionary refers to a meal as any of the regular daily occasions when food is eaten; that is, a meal is generally breakfast, lunch or dinner.

The CRA has previously indicated [101761-2 dated October 9, 2012] that food or beverages that meet the exceptions to the zero-rating provision in paragraphs 1(a) to (n), (o.4), (p) and (r) of Part III of Schedule VI, other than part of a meal, will not be a qualifying meal plan.

The CRA has also previously indicated [135640 dated June 26, 2012] where students’ meal plans includes in part the right to buy basic groceries from a “general store” operated by the same person operating the cafeteria, and the student takes those grocery items to their room to prepare their own meal in their room (i.e., not at a cafeteria or restaurant located at the university or public college), it would not meet the requirements of the meal plan exemption. Thus the entire meal plan became taxable.

Our question concerns food preparation areas within the confines of the cafeteria or restaurant area. Many students prefer the ability to prepare their own meals for a variety of athletic, cultural, religious or health-related reasons.

Does the CRA consider the provision of a meal at a restaurant or cafeteria at the university or college (and assuming all other conditions of the exemption are met) to include individual “stations” in the cafeteria area? Any student with a meal plan card has access to any and all of the types of stations noted below:

1. A salad bar where the student chooses individual ingredients to prepare a salad. The salad bar contains commercial prepared salad dressings as well as base ingredients for the student to make their own dressing (oil, vinegar, spices, nuts, seeds, etc.);
2. A waffle iron where the student uses a batter prepared by cafeteria staff to cook an individual waffle;
3. A waffle iron and basic ingredients provided by the cafeteria (flour or gluten free flour, eggs or egg substitute, sugar or sugar substitute, choice of various cooking oils, etc) where the student uses the ingredients to prepare a batter, and then cook an individual waffle;
4. A cooking station where the student prepares and cooks cafeteria supplied eggs or egg substitutes (where there is a preference for freshly cooked eggs instead of the prepared eggs available in a warming dish);
5. A “reheating station” where students may choose from a selection of previously prepared food that have been cooled and refrigerated, and the student reheats the food in a microwave oven, toaster oven or other equipment provided (e.g, a submarine sandwich, “discounted leftovers”, cheese bread etc.);
6. An ice cream & frozen yogurt bar where the student selects their base and adds individual flavorings;
7. A self-cook area for the student to select from cafeteria supplied raw proteins, spices, coatings, and other flavorings, and cooks the raw protein to the student’s individual specification. The student may then select cafeteria prepared vegetables and starches, or have the ability to prepare their own in addition to the proteins. That is, within the cafeteria and using ingredients supplied by the cafeteria, the student may prepare and cook his or her own meal in its entirety or, prepare it in part and complete the meal by selecting cafeteria prepared components in part.

In any of the scenarios described above, the students are **not** allowed to bring their own ingredients into the cafeteria to use equipment and prepare a meal.

Given the broad common meaning of the term “meal” it would appear any of these types of preparation and/or cooking stations available in the cafeteria would be allowed under section 13, Part III, Schedule V.

#### CRA Response:

*This question was not addressed by the CRA.*