Member Advisory

February 2012

2011 Canada Revenue Agency (CRA) Tax Roundtable

The annual Canada Revenue Agency (CRA) Roundtable Meeting was held in May 2011. 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 2012 Roundtable, contact Director of Professional Services Sean Johnson CA at s.johnson@icaa.ab.ca or call 1-800-232-9406.

Member Advisory is produced jointly by the Institute of Chartered Accountants of Alberta and the Institute of Chartered Accountants of Saskatchewan and distributed as part of the electronic monthly mailing package. Opinions expressed in this bulletin are those of the author and do not reflect the official position of ICAA or ICAS. Any queries regarding this material should be directed to Sean Johnson CA, ICAA Director, Professional Services at s.johnson@icaa.ab.ca. This bulletin has been posted to the ICAA and ICAS websites. For additional copies of this advisory, please access http://www.albertacas.ca/Resources/TechnicalPublications/MemberAdvisory.aspx or contact Chris Pilger, ICAA Director, Communications at c.pilger@icaa.ab.ca or 1-800-232-9406. In Saskatchewan, please contact Sue James at s.james@icas.sk.ca or (306) 791-4142.

GST/HST Questions

1. We are finding that many registrants took a while to understand their requirements under the new rules created by the introduction of HST to BC and Ontario. Corrections were made in subsequent returns when errors were discovered. Please provide information on whether CRA will apply administrative tolerance for reporting errors made during the HST transitional period insofar as audit assessments are concerned?

   CRA Response:

   Reporting penalties have been implemented to encourage accurate reporting of information required to properly allocate GST/HST revenues among the federal and provincial governments. It is important for businesses to make best efforts to fully and accurately meet their obligations.

   Penalties will be applied wherever considered necessary to achieve future reporting compliance and/or where registrants have not made reasonable efforts to comply with reporting requirements.

   The CRA does practice “administrative tolerance” with respect to the new rules. The rule of thumb is: “Be tolerant and recognize that this is new for everyone”. In considering the application of penalties, consideration may be given to whether a registrant has acted in good faith and made reasonable efforts to fully and accurately meet his obligations, particularly during transition to Ontario/BC HST. This being said, each situation will be looked at on a case-by-case basis and the relief accorded where necessary. The usual principles of fairness and due diligence will continue to apply.

   Additional Question:

   Would a registrant require to file an amended return or make adjustments in the subsequent period for failure to file RITCS in the appropriate reporting period?

   CRA Response:

   Based on the definition of specified input tax credit in section 29 of the New Harmonized Value-added Tax System Regulation No.2 and the prescribed time to report the specified provincial input tax credit in paragraph 30(d) of the regulations, any reporting RITCS error would require an amended return.

2. In the reply to the 2010 Roundtable “Question #12” regarding the registered purchaser of real property providing a rebate submission on GST Form 189 so the auditor can process a refund when denying ITCS claimed on the payment of tax, you indicated that auditors across the province would be informed of the requirement to make this option available. CRA auditors still appear to be unaware of this process and are both denying ITCs and refusing to allow the rebate. This is true of auditors in all Alberta TSOs; even Team Leaders, including those of the "prepayment teams", appear to have missed the memo outlining the administrative policy.

   a) What steps are being taken to rectify this problem, given that the only recourse a registrant has is to file a Notice of Objection?
   b) How can we resolve this when an auditor and/or Team Leader refuse to process the GST 189?

   CRA Response:

   We are aware of the ICAA’s concerns in regard to the allowance of eligible Section 261 rebates where Input Tax Credits have been denied during the course of an audit. Although direction has not yet been issued on this particular subject, we are continuing our efforts to determine the most appropriate approach towards a resolution.

3. A similar situation to question #2 occurs with Public Service Body Rebates that should be assessed when ITCs are denied during an audit. We have been told the CRA system that was implemented in 2007 is

incapable of allowing the CRA to assess these rebates as section 296 of the ETA requires. Registrants are being told to apply for the rebate separately from the audit assessment and then to request waiver of the interest and penalties that arise. Is there in fact a systems problem and, if so, when will this system be fixed so the CRA can assess as required by the ETA and the registrant is credited with such rebates automatically as part of the normal audit process?

CRA Response:

Our response would be similar to #2 and we are continuing our efforts to determine the most appropriate approach towards a resolution.

4. With the centralization of the Objection process, it is taking weeks for confirmation of receipt of submissions and as much as 12 months until the Objection is assigned to an Appeals officer. Once assigned, some Objections take months to be initiated. In turn, some Appeals Officers are demanding an instant response to questions and requests for information.

   a) Can we see some flexibility at the start of the process, as we are all trying to get the situation resolved but it may take a bit of time to find information because of the delay.
   b) What is the Appeals group doing to rectify the backlog?
   c) We are finding that CRA Collections is pushing for quicker resolution of "debt". With the new process of distributing Collection files on a National basis, can we please have a contact in Collections who can assist while assessments are being discussed?

CRA Response:

a) Our goal is to resolve issues as soon as possible. Our experience is that the vast majority of cases involve factual disputes. Advisors can facilitate the resolution process by articulating their facts and reasons in the Notice of Objection, and by submitting relevant documents at the time of filing. Once the file is assigned to an officer and initial discussions have occurred, the officer may require you to provide additional information. The amount of time to provide such additional information will vary based on the complexity of the case and the volume of documentation required. If you find the timeline unreasonable and are unable to agree on a deadline, you can contact the Team Leader to discuss the situation.

b) Inventory reduction in Appeals is a priority with the Agency, and we are doing what we can to get the inventory levels to a manageable level without sacrificing quality of work.

We agree that the current delays in assigning objections are not acceptable, and the Branch is exploring several pilot projects to deal with the backlog. These projects deal with how we handle low risk, low dollar value files, and how we will handle project and group files, among others. These pilot projects are in the preliminary stages, and as such, we do not have any results to report on as of today. Hopefully, the results will be noticeable as these pilot projects are fully implemented. Centralizing the intake of Appeals inventory was also done with a view to reducing inventory levels overall. If there is an office with excess capacity, they are now able to access inventory that would have gone to another office that did not have the capacity to handle that file at that time. The benefits may not be noticeable, but some offices would have even larger backlogs if this was not done.

c) No one contact is available. It is a National Inventory. The contact quite rightly is the Collection Officer assigned and if necessary their Team Leader. As the only time that their concern is raised is when an Officer is in contact, then they will have a 1-800 line to contact the Officer, wherever they may be.

5. Now that BC and Ontario have harmonized:

   a) Has CRA had discussion with the non-harmonized provinces aimed at resolving the inconsistency in the place of supply rules for HST and PST so that there is no case where both taxes apply?

b) What actions are being taken to harmonize Alberta, Saskatchewan, Manitoba, PEI and the three Territories?
c) Can we expect that some of these provinces or territories will introduce HST in the near future?
d) Will there be a national rate of HST applied?

CRA Response:

Question 5 relates to issues that are within the purview of the Department of Finance and would have to be addressed by them. While the Canada Revenue Agency is responsible for the interpretation and administration of the GST/HST legislation, it is the Department of Finance that is responsible for tax policy matters, including those related to sales tax harmonization with the provinces. Inquiries about the adoption of the HST in other provinces, HST rates, and legislative changes to the ETA should therefore be directed to the Department of Finance.

6. With the introduction of ITC Recapture in BC and Ontario, "large businesses" are required to use the NetFile reporting process because other electronic formats don't have the RITC fields. Most if not all "large businesses' were using EDI reporting prior to July 1, 2010 and this form of reporting allows direct payment of Net Tax using the registrant's own bank. Will CRA be setting up the RITC fields on the EDI platform any time soon, so the large businesses can go back to using the more efficient and more effective EDI reporting?

CRA Response:

On January 4, 2010, the Government of Canada announced, by way of a Canada Revenue Agency (CRA) news release, new electronic filing and reporting requirements for certain Goods and Services Tax / Harmonized Sales Tax (GST/HST) registrants under the Excise Tax Act (ETA). Details regarding the implementation of the mandatory electronic filing and reporting requirements for these GST/HST registrants were also released at that time. One of the circumstances in which a GST/HST registrant is required to file their GST/HST returns electronically is if the registrant is required to recapture input tax credits (ITCs) for the provincial part of the HST paid or payable on certain taxable supplies acquired in Ontario and British Columbia.

From July 1, 2010, until June 30, 2018, with the introduction of the HST in Ontario and British Columbia, large businesses—generally those who, with their associates, make taxable supplies worth more than $10 million annually, and certain specified financial institutions and persons related to them—will be required to repay or “recapture” the portion of any available ITCs that is attributable to the provincial part of the HST that becomes payable, or is paid without having become payable, in respect of a specified property or service that is acquired, or brought into one of these provinces, by a large business for consumption or use by that business in those provinces (the RITC requirement).

A “large business”, for the purposes of the definition of large business in subsection 236.01(1) of the ETA, is a prescribed person for a recapture period if the person is a registrant whose recapture input tax credit threshold amount in respect of the recapture period exceeds $10,000,000.

For the purposes of the definition of “large business” in subsection 236.01(1) of the Act, a person is a prescribed person at any time if, at that time, the person is a registrant that is

(a) a bank;
(b) a corporation licensed or otherwise authorized under the laws of Canada or of a province to carry on in Canada the business of offering to the public its services as a trustee;
(c) a credit union;
(d) an insurer or any other person whose principal business is providing insurance under insurance policies;
(e) a segregated fund of an insurer;
(f) an investment plan (as defined in subsection 149(5) of the ETA);

(g) the Canada Deposit Insurance Corporation; or
(h) a person related to a person described in any of paragraphs (a) to (f).

Electronic filing

For reporting periods ending on or after July 1, 2010, all GST/HST registrants are eligible to use GST/HST NETFILE, but some registrants were precluded from using other electronic filing options because of their particular circumstances.

As noted in the announcement, all registrants required to recapture ITCs for the provincial part of the HST in Ontario or British Columbia, are also required to use GST/HST NETFILE to file their returns. These registrants were not eligible to use any other filing options.

However, starting in April 2011, GST/HST registrants that are required to recapture ITCs for the provincial part of the HST will be able to use Electronic Data Interface (EDI) to file the electronic equivalent of Form GST34, *Goods and Services Tax/Harmonized Sales Tax (GST/HST) Return for Registrants*, Schedule B for the recapture of input tax credits, and Schedule C for the reconciliation of recaptured input tax credits. GST/HST Registrants should contact their financial institutions to see if they provide this service to their customers. For more information on EDI, refer to "How to use GST/HST EDI" at www.cra.gc.ca.

Payments

Where a GST/HST registrant large business files a return using GST/HST NETFILE and has an amount owing, the registrant may make a payment using one of the following options:

- pay electronically using CRA's My Payment option; and
- pay electronically using the registrant's financial institution's Internet or telephone banking service.

For more information, please go to www.cra.gc.ca/electronicpayments and contact your financial institution to see if it offers these services.

Additional Question

Is CRA experiencing any problems with EDI?

CRA Response:

CRA is not aware of any problems with EDI.

7. The CRA has been giving RT0001 numbers to Public Sector Bodies that only file a section 59 rebate twice per year. These numbers look exactly like a real registration, but no returns are expected, no GST Form 34s are sent out and the rebates are not solicited by the CRA if not filed. The CRA also assigns similar numbers to people filing a "Non registrant GST Return" [GST 62 NR]. When checking these numbers on the CRA GST/HST Registry you will be told the account is "not registered". However, anyone assuming that the person is registered (and therefore not checking the registry) could improperly treat transactions (e.g. purchase of real property or use of a GST 44). Would CRA consider finding a way to differentiate these non-filing entities, other than giving them a "false GST number" that can create errors in the collection and reporting of GST and HST?

CRA Response:

There are currently no plans to differentiate non-filing registration numbers. The onus is on the parties to any particular transaction to verify that a registration number is valid. This is similar to the requirement for a registrant to obtain prescribed information prior to claiming an input tax credit.

Parties to a transaction involving the sale of real property or the sale of a business (GST44) are required to confirm that a GST/HST registration number is valid.

- The CRA will verify valid registration by **telephone**; or
- The **GST/HST Web Registry** can be accessed to verify the registration of a registrant on any given date. The GST Web Registry is cross-referenced with the registrant's legal or operating name as provided to the CRA at the time of registration; therefore, businesses should be aware of this when obtaining this information from a registrant.

The various options are readily available to verify the required information.

8. The services of a BC realtor are contracted by an Alberta resident to sell a property (old principal residence) located in BC. The Alberta resident's new principal residence is in Alberta. The realtor performs the normal suite of services (show the property, draws up the purchase agreement, etc). We have been told verbally that the services are not in relation to real property and therefore the place of supply is in Alberta (address in Alberta of the recipient). Would CRA provide guidance on when a service is "in relation to real property"?

CRA Response:

The determination of whether a service is in relation to real property for purposes of the place of supply rule in section 14 of the New Harmonized Value-added Tax System Regulations is made based on the same guidelines that are set out in GST/HST Policy Statement P-169R and used to determine whether a service is in respect of real property for zero-rating purposes. Therefore, to be considered a service in relation to real property, there must be more than a mere indirect or incidental nexus or connection between the service and the underlying real property.

Generally, the following guidelines will be applied to aid in the determination of whether the connection between the service and the real property is sufficiently direct for the service to be "in relation to" the property:

- Was the service designed, developed or undertaken to fulfil or serve a particular need or requirement arising from or relating to the property? This guideline involves determining the purpose or object of the service.
- Is the relationship between the purpose or objective of the service and the property reasonably direct? The relationship between the service and the real property must be more direct than indirect for the service and the property to be considered "in relation to" each other.

For example, a service and property are generally regarded as being "in relation to" each other if the purpose of a service is to:

- physically count the property;
- appraise or value the property;
- physically protect or secure the property; or
- enhance the value of the property.

Similarly, if the service is aimed at effecting or dealing with the transfer of ownership of, claims on or rights to the property, or determining title to the real property, the service is generally regarded as being in relation to the real property.

Therefore, where a realtor in BC has entered into a contract with a recipient who has an Alberta address, to sell a property situated in BC, the place of supply of the service is BC under section 14 of the Regulations, as the real property to which the service relates is situated in BC. The supply of the service would therefore be subject to HST at a rate of 12%.

9. There are issues with classification of the tax status of travel agent commission fees (i.e. place of supply rules for both Part V Schedule VI and HST purposes).

a) Is booking a hotel room a service in relation to real property such that (a) if this service is provided to a non-resident of Canada it would be taxable for a hotel in Canada and (b) if this service is provided to a resident of Canada (or a non-resident for that matter) would it be subject to HST if hotel is in British Columbia?

b) Similarly, (a) is booking a rental car (i.e. 3 day rental) a service in relation to TPP in Canada, thus taxable when provided to a non-resident of Canada and (b).if the rental car is in BC, is the travel agent fee subject to HST?

CRA Response:

All legislative references are to the *Excise Tax Act* (ETA) unless otherwise specified.
For GST/HST purposes, a supply of accommodation is considered to be a supply of real property. The determination of whether a service is in relation to real property for purposes of the place of supply rule in section 14 of the *New Harmonized Value-added Tax System Regulations* (the Regulations), or in relation to tangible personal property (TPP) for purposes of the place of supply rules in sections 15 and 16 of the Regulations, is made based on the same guidelines that are set out in GST/HST Policy Statement P-169R and used to determine whether a service is in respect of real property or TPP for zero-rating purposes. Therefore, to be considered a service in relation to real property or TPP, there must be more than a mere indirect or incidental nexus or connection between the service and the underlying real property or TPP.

Generally, the following guidelines will be applied to aid in the determination of whether the connection between the service and the real property is sufficiently direct for the service to be "in relation to" the property:

- Was the service designed, developed or undertaken to fulfil or serve a particular need or requirement arising from or relating to the property? This guideline involves determining the purpose or object of the service.
- Is the relationship between the purpose or objective of the service and the property reasonably direct? The relationship between the service and the real property must be more direct than indirect for the service and the property to be considered "in relation to" each other.

For example, a service and property are generally regarded as being "in relation to" each other if the purpose of a service is to:

- physically count the property;
- appraise or value the property;
- physically protect or secure the property; or
- enhance the value of the property.

Similarly, if the service is aimed at effecting or dealing with the transfer of ownership of, claims on or rights to the property, or determining title to the real property or TPP, the service is generally regarded as being in relation to the real property or TPP.

A supply of a service provided by a travel agent of booking a hotel room would generally be considered to be a supply of a service in relation to real property.

A supply of a service in relation to real property is deemed to be made in Canada under paragraph 142(1)(d) where the real property is situated in Canada. Therefore, a supply of a service made by a registrant of booking a hotel room where the hotel is situated in Canada is considered to be made in Canada.

Generally, under section 14 of the Regulations, a supply of a service in relation to real property that is situated in Canada that is situated primarily (more than 50%) in the participating provinces is considered to be made in the participating province in which the greatest proportion of the real property that is situated in the participating provinces is situated. For example, a supply of a service of booking a room in a hotel situated in British Columbia is considered to be made in British Columbia, and would be subject to HST at 12%.

The place of supply rules governing supplies of services in relation to TPP are set out in section 15 and 16 of the Regulations. Generally, a supply of a service provided by a travel agent of booking a rental car would **not** be considered to be a supply of a service in relation to TPP where the service does not relate to particular TPP at the time that the supply is made.

A supply of a service, other than a service in relation to real property or a prescribed service, is deemed to be made in Canada under paragraph 142(1)(g) where the service is, or is to be, performed in whole or in part in Canada.

Section 13 of the Regulations provides general rules for determining if a supply of a service is made in a province. These general rules do not apply where rules regarding more specific types of services apply, such as where the service is in relation to real property or tangible personal property. Generally, under section 13, the supply of the service is made in a province based on the business or home address in Canada of the recipient that the supplier obtains in the ordinary course of its business. Where a supply made in Canada of booking a rental car is not in relation to TPP, this rule would generally be used to determine the province in which the supply is made. For example, if the supplier obtains a single home or business address in Canada of the recipient of the car rental booking service in the ordinary course of its business which address is in British Columbia, the supply of the service would be considered to be made in British Columbia and subject to HST at 12%. Generally, if the supplier does not obtain an address in Canada of the recipient in the ordinary course of its business, the supply of the service will be made in a participating province if the Canadian element of the service is performed primarily in participating provinces and the greatest proportion of the service is performed in that province or made in a non-participating province if the Canadian element of the service is not performed primarily in participating provinces. Based on the information provided, there does not appear to be a provision that would apply to zero-rate the supply of the service in the scenario provided.

10. A GST registered proprietor is in the business of buying and selling land. This same individual also personally inherits a single piece of vacant land of which he/she plans to sell. Will the sale of vacant land be exempt per section V I 9 or will subparagraph 9(2)(a)(i) apply, even though this property was acquired outside of the proprietorship business and was obtained as a result of personal inheritance?

CRA Response:

There is not enough information provided to indicate what the vacant land was used for or how the individual is treating the land for income tax purposes. Therefore, we offer the following for your information.

Generally, sales of real property by an individual or a personal trust are exempt from the GST/HST under subsection 9(2) of part I of Schedule V to the Excise Tax Act (ETA), subject to certain exceptions.

Subparagraph 9(2)(a)(i) of Part I of Schedule V to the ETA excludes from the general exemption the sale of real property made by an individual where, immediately before the time ownership or possession of the property is transferred to the recipient of the supply, the property is capital property used primarily (more than 50%) in a business carried on by the individual with a reasonable expectation of profit.

The determination of whether or not land that is capital real property of an individual is used primarily in a business immediately prior to its sale is generally not based on a single factor, but upon weighing all of the factors in a particular case. Appendix A of GST/HST Memorandum 19.5, Land and Associated Real Property, (Memorandum 19.5) provides guidelines for determining if capital real property is used primarily in a business.

Subparagraph 9(2)(a)(ii) of Part I of Schedule V to the ETA excludes from the general exemption in subsection 9(2) a sale of real property made by an individual who is a registrant where, immediately before the time ownership or possession of the property is transferred to the recipient of the supply, the property is capital property used primarily in making taxable supplies of the real property by way of lease, license or similar arrangement or is used in a combination of carrying on a business with a

reasonable expectation of profit and making taxable supplies of the property by way of lease, license or similar arrangement.

Appendix B of Memorandum 19.5 provides guidelines for determining whether or not an activity engaged in by an individual has a reasonable expectation of profit. GST/HST Policy Statement P-176R, Application of Profit Test to Carrying on a Business, provides criteria for determining whether a business is being carried on without a reasonable expectation of profit. Income Tax Interpretation Bulletin IT-218R, Profit, Capital Gains and Losses from the Sale of Real Estate, Including Farmland and Inherited Land and Conversion of Real Estate from Capital Property to Inventory and Vice Versa, provides additional information with respect to whether the proceeds from a sale of real estate will be considered business income, property income or a capital gain.

Paragraph 9(2)(b) of Part I of Schedule V to the ETA excludes from the general exemption a supply of real property made by an individual in the course of a business of the individual or, where the real property is sold by an individual in the course of an adventure or concern in the nature of trade, the individual has filed with the Canada Revenue Agency (CRA) the election under subparagraph 9(2)(b)(ii).

Appendix C to Memorandum 19.5 provides guidelines for determining whether a sale of real property takes place in the course of a business or in an adventure or concern in the nature of trade (or neither), for purposes of paragraph 9(2)(b) of Part I of Schedule V to the ETA

Generally, a sale made in the course of a business may be distinguished from a sale that constitutes an adventure or concern in the nature of trade by the amount of time, attention and resources devoted to the transaction or by the frequency or regularity of similar transactions. In this regard, a sale made as an adventure or concern in the nature of trade usually involves acquiring property on an isolated basis with the primary or secondary intention of resale at a profit, and only passive or limited activities related to the resale (i.e., those necessary to facilitate the resale).

Regular sales of property, or sales made in a business-like manner as demonstrated by extensive marketing and advertising, or the devotion of extensive time, attention and resources to the sale of the property, would normally be considered as sales made in the course of a business. Only in those circumstances where the supplier changes or abandons the primary and, where applicable, the secondary intention of resale, would the eventual resale be made neither in the course of a business nor as an adventure or concern in the nature of trade.

Where property was originally acquired without the primary or secondary intention of resale (e.g., inherited property or property acquired solely for personal use), or the primary and, where applicable, the secondary intention of resale was abandoned during the holding of the property (as seen perhaps by a change of use), the subsequent sale of the property generally would not be considered as being made as an adventure or concern in the nature of trade.

CRA considers that a primary or secondary intention of resale from the time of acquisition to time of disposition is normally a prerequisite for the resale to have been made as an adventure or concern in the nature of trade. If a primary or secondary intention of resale is present, the extent of activities in relation to a particular property as well as the frequency or regularity of similar transactions involving other properties must be examined to determine whether the sale was made in the course of a business or as an adventure or concern in the nature of trade.

In summary, real property that was originally acquired without a primary or secondary intention of resale and subsequently sold by an individual with only passive or limited activities involved in the sale of the property would be considered as having been made neither in the course of a business nor as adventure or concern in the nature of trade. A sale of such property would be exempt under section 9 of Part I of Schedule V to the ETA, unless one of the other exclusions to the exemption in section 9 applied. Where real property that was originally acquired without a primary or secondary intention of resale is subsequently sold by an individual or a personal trust, and there are activities undertaken with respect to the sale of the property, then, depending on the extent of the activities undertaken, the sale may be considered as having been made in the course of a business. If such activities include servicing the property to a greater extent than required by law, or selling the property in a business-like manner

as demonstrated by extensive marketing and advertising, or by devoting extensive time, attention and resources to the sale of the property, the supply may be considered to be made in the course of a business and excluded from exemption by virtue of subparagraph 9(2)(b)(i) of Part I of Schedule v to the ETA.

11. Please explain the interaction between the definition of "non-creditable tax charged" in subsection 259(1) and subsection 256.2 (9)? The latter subsection restricts a public service body from claiming a new residential rental housing rebate if a public service body rebate has been claimed under section 259. The subsection 259(3) rebate is calculated based on a specified percentage of "non-creditable tax charged". However, pursuant to subparagraph (b)(ii) of said definition, a section 256.2 new residential rental housing rebate is carved out of "non-creditable tax charged" if the public service body "has obtained or is entitled to obtain a rebate…". It appears somewhat circular since public service body is entitled to claim a section 256.2 rebate, they simply choose not to, in favor of claiming a subsection 259(3) rebate. There are no restricting provisions in section 259 similar to subsection 256.2(9).

CRA Response:

In general, subsection 259(1) of the *Excise Tax Act* (ETA) defines "non-creditable tax charged", in respect of a property or service, to mean the amount, if any, by which:

- the total of all amounts in subparagraphs a(i) to a(v) exceeds
- the total of all amounts, each of which is included in the total determined in paragraph (a) and is included in subparagraphs b(i) to b(iii).

In particular, subparagraph 259(1)(b)(ii) describes an amount for which it can reasonably be regarded the person has obtained or is entitled to obtain a rebate, refund or remission under any other section of the ETA or under any other Act of Parliament.

In essence, subparagraph 259(1)(b)(ii) has the effect of reducing the amount of non-creditable tax charged by any amount for which the person has obtained or can obtain a rebate, refund or remission under any other section of the ETA or other Act of Parliament. On the other hand, if a public service body is not entitled to an amount of a rebate, refund or remission under another section of the ETA or other Act of Parliament, then subparagraph 259(1)(b)(ii) will not impact the calculation of non-creditable tax charged.

Subsection 256.2(9) of the ETA provides, in part, that **no rebate** shall be paid to a person under this section if all or part of the tax included in determining the rebate would otherwise be included in determining a rebate of the person under any of sections 254, 256, 256.1 and 259 of the ETA. Therefore, where a public service body is entitled to claim a public service body rebate under section 259 for tax payable or paid, or deemed paid, in respect of a property, it cannot also claim a new residential rental property rebate under section 256.2 in respect of this property.

Please note, however, that if the public service body is not entitled to claim a public service body rebate under section 259 in respect of the property (for example, where the property is a prescribed property listed in section 4 of the *Public Service Body Rebate (GST/HST) Regulations* to the ETA), then it may be eligible to claim a new residential rental property rebate under section 256.2 where the conditions under that provision are met.

The Department of Finance's Explanatory Notes for subsection 256.2(9) provides an example of the intended interaction between subsection 256.2(9) and section 259 as follows:

> *For example, if a municipality were entitled to claim a rebate under section 259 equal to a portion of the tax deemed to be paid by it as builder of a seniors' residence, the municipality would not also be entitled to a rebate under section 256.2 in respect of the residence.*

12. We understand that the PST transitional rebates for residential construction are slowly being paid out. What are the expected timeframes for pay out of same and how can we advise registrants in order to make it easier for the CRA to process the claims?

    CRA Response:

    The vast majority of the PST transitional rebates are credited by builders to individual recipients. Since builders make adjustments on their returns they are not waiting for payment. PST Transitional rebates filed by individuals are given priority attention to ensure that there are no processing delays.

13. Currently there are a number of businesses that use trade names or trade styles on their business and on the invoices that they receive from their suppliers. On more than one occasion we have seen clients denied input tax credits due to the fact that the name on the invoices from the suppliers was not the "legal" name of the business; yet the payments, receipt of the goods and all of the accounting book entries support the fact that the entity that claimed the ITC is the “recipient” of the supply. The RC1 and RC1A allow a registrant to specify a trade name to be used. Would CRA please set a policy to have auditors look at this matter in a more practical sense?

    CRA Response:

    Your concerns have been noted and CRA will ensure that auditors are reminded of the use of trade names or styles and their relationship to legal names when reviewing ITC claims.

14. We are finding many situations where the auditor, especially with respect to credit returns, issues no proposal letter to allow the taxpayer to respond to the contentious issues. This results in a cost to registrants in filing a Notice of Objection and also long delays in obtaining legitimate credits.

    a) Would CRA please communicate to all CRA auditors CRA’s policy that all registrants must be given the courtesy of being informed that their GST/HST return is going to be reassessed, either by way of a telephone call or a proposal letter?
    b) Will the CRA endeavor to require every GST/HST auditor to communicate directly with the registrant or their representative, by way of telephone or by meeting in person, as a regular audit step, in order to eliminate the needless waste of time and the added cost to the registrant?

    CRA Response:

    a) Auditors are advised of our procedures with regard to communicating the results of the audit with the registrant in their initial training and on an on-going basis through discussions with their Team Leaders. We expect that the results of the audit are communicated to the registrant by the auditor either verbally or in a letter.

    b) As mentioned in the response to a) above, auditors are expected to communicate with the registrant regarding the outcome of the audit. The GST audit reports have an area for taxpayer concurrence which are required to be completed.

15. The Minister may provide relief from interest amounts, and in some cases penalty amounts, if he or she is satisfied that a taxpayer has an inability to pay or suffers from financial hardship related to a debt owed to the CRA. Please provide information on the procedure to follow for a taxpayer to be granted relief for penalty/interest due to financial hardship.

    CRA Response:
    For an individual taxpayer, financial hardship refers to financial suffering or lack of what is needed for basic living requirements, such as food, clothing, shelter and reasonable non-essentials. For a corporate taxpayer, financial hardship refers to where the continuity of business operations and the

continued employment of a firm's employees are jeopardized. Ability to pay is defined as a taxpayer's current and future capacity to pay or borrow funds.

Taxpayers or their authorized representatives should use Form RC4288 and submit their relief request in writing to the intake centre responsible for the taxpayer's province or territory of residence (see Table 1). Form RC4288 provides instructions and examples of supporting documentation to send with the relief request. A letter providing additional information may also be attached to the form.

Taxpayers are expected to make full financial disclosure when requesting relief based on financial hardship or an inability to pay. Supporting documents can include financial statements (an income and expense statement, assets and liabilities statement), current mortgage statement and property assessment, loans and monthly bills, bank statements for three months, current investment statements, copies of credit card statements, etc. This documentation should pertain to the entire household, where applicable.

A relief request does not stop or suspend collection of an account or the accrual of penalties and interest, therefore a taxpayer should maintain or commence payments while the decision is pending. Relief may be granted when the facts support that a taxpayer has made bona fide efforts to discharge arrears/balance over time but the interest charges absorb a significant portion of each payment; the arrears balance is so onerous in relation to the amount of payment that the taxpayer has the confirmed inability to pay; that it would be difficult, if not impossible, for the taxpayer to ever resolve their account. For each request for relief the CRA will also consider the taxpayer's past compliance, whether the taxpayer has knowingly allowed a balance to exist, has exercised a reasonable amount of care and whether the taxpayer acted quickly to remedy any delay or omission.

Consideration would not generally be given to cancelling a penalty based on financial hardship or an inability to pay unless an extraordinary circumstance has prevented compliance. For example, when a business is experiencing extreme financial difficulty and enforcement of such penalties would jeopardize the continuity of its operations, the jobs of the employees, and the welfare of the community as a whole. Once a decision has been rendered, the taxpayer will be advised in writing. If relief is granted in full or in part due to financial hardship/inability to pay, the taxpayer will be invited to re-apply after 12 months if their financial situation has not improved.

If relief is denied, the taxpayer has the right to request a second administrative review. They cannot object to or appeal CRA's decision but they are entitled to a judicial review by the Federal Court. Generally, taxpayers should ask for a second administrative review from the CRA before filing an application for judicial review with the Federal Court.

For more information on the taxpayer relief provisions visit our Web site at cra-arc.gc.ca (go to "Resolving Disputes" then choose "Taxpayer relief provisions" under the section "Your rights to redress".

16. We understand that there is going to be a change in the way collectors are assigned to a file. Will a taxpayer continue to have a collections officer in charge of their file or will a call centre be used?

CRA Response:

The Account Receivable National Inventory (ARNI)

ARNI is a new model for the allocation of **non face-to-face** workload. ARNI builds on regional and national initiatives which have already demonstrated that accounts involving **non face-to-face** interaction can be collected without regard to geographic boundaries.

Since April 4, 2011, **non face-to-face** collection workloads (T1-T2-PAYDAC-GST) is being distributed to approximately 1,200 Collection Contact Officers (CCO) in 38 TSOs across the country without regards to geographic boundaries, which means that a CCO officer working in New Brunswick could have an account from British Columbia in its inventory.

ARNI is not a change to the collection strategy. The national Debt Management Call Centre (DMCC) will still be CRA first point of contact for taxpayers. If an arrangement cannot be concluded with the DMCC, the taxpayer will be referred to an ARNI agent for resolution. Files that require in-depth investigations, field work and more complex legal actions will still be handled by respective Home TSO.

ARNI will give us the ability to assign higher priority accounts more effectively, address growing inventories and provide flexibility to respond to changing priorities. ARNI business rules and administrative processes have been developed to ensure consistent collection of accounts.

17. How will the RITC rules impact reasonable mileage allowances paid to employees in British Columbia and Ontario?

CRA Response:

All legislative references are to the *Excise Tax Act* (ETA) unless otherwise specified.
The recapture of input tax credit (RITC) requirement for large businesses is provided for in section 236.01 and in the *New Harmonized Value-added Tax System Regulations, No. 2* (the Regulations) and is further described in GST/HST Technical Information Bulletin B-104, *Harmonized Sales tax – Temporary Recapture of Input Tax Credits in Ontario and British Columbia*.

Section 174 deems a person paying an allowance to have consumed or used any property or service in relation to the allowance. In order for an allowance to qualify under section 174, it must meet several conditions, one being the reasonableness of the allowance under the *Income Tax Act* (ITA).

Where a mileage allowance is paid for the use of a motor vehicle for travel all or substantially all within Ontario, 13/113 of the motor vehicle allowance would be deemed to be the amount of the HST paid on the allowance, while for travel all or substantially all within British Columbia, 12/112 of the allowance would be deemed to be the amount of HST paid. To the extent that the large business has paid the allowance in the course of its commercial activities, the large business would be entitled to an input tax credit (ITC). However, motor vehicle allowances cover many components, one of which is fuel. In British Columbia, fuel is subject to a point of sale rebate for the provincial portion of the HST. Subsection 234(4.1) prevents any ITC, rebate, refund or remission under the ETA or any other Act of Parliament, to be credited, paid, granted or allowed to the extent that the amount can be determined directly or indirectly, to relate to an amount that is subject to a point of sale rebate. As a result, only part of the deemed tax paid on an allowance for motor vehicle use in British Columbia can be claimed as an ITC. If a large business pays a motor vehicle allowance to an employee in circumstances where an ITC would be available under the ETA to the large business in respect of that allowance, the large business will generally be required to recapture the provincial component of that ITC to the extent that the allowance is attributable to specified property and services.

The Canada Revenue Agency, and the Department of Finance, in consultation with the governments of Ontario and British Columbia, have been in discussions as to whether GST/HST registrants may use an administrative factor in determining what portion of an ITC for a motor vehicle allowance would be subject to recapture, and also in determining what portion of the motor vehicle allowance for use in British Columbia would be attributable to fuel. Persons would have the option of using this administrative factor, or using their own reasonable allocation. Until such time as an administrative factor is decided upon, persons should continue to use a reasonable allocation based on the composition of the motor vehicle allowances that they pay.

Once a decision is made, the GST/HST Technical Bulletin, B104, *Harmonized Sales Tax – Temporary Recapture of Input Tax Credits in Ontario and British Columbia,* will be updated to inform registrants.

18. What is the turnaround time for CRA headquarters to process requests for municipal designation in “rent-geared-to-income” situations, as we have heard of files sitting for up to two full years with no contact

received from CRA on the request. Is this normal? Has the implementation of HST in BC and Ontario put a greater emphasis on processing requests from those provinces? What can we do to expedite these requests?

CRA Response:

The Municipalities and Health Care Services Unit of the Excise and GST/HST Rulings Directorate in Headquarters is responsible for processing requests respecting the designation/determination of an organization as a municipality, including municipal designation requests relating to the "rent-geared-to-income" (RGI) housing. In addition, the Unit is responsible for the interpretation of the GST/HST provisions relating to the municipal sector such as the exemptions found in Part VI of Schedule V to the Excise Tax Act (ETA), the health care sector, such as the exemptions found in Part II of Schedule V to the ETA; the drugs and medical devices in Part I and II of Schedule VI; and public service body rebates for municipalities, hospital authorities, facility operators and external suppliers in section 259 of the ETA.

With the implementation of the 100% public service body (municipal) rebate in 2004, there has been greater awareness of the rebate's availability and, consequently, the number of requests for municipal designation/determination has increased. In addition, the implementation of the HST in British Columbia and in Ontario has generated more requests, at least in the short term. However, the same can be said of requests respecting the application of the GST/HST to the health care sector, given the recent amendments to the legislation affecting this sector (e.g., extension of the 83% rebate of the GST/federal part of the HST to facility operators and external suppliers).

We have also noticed that files are becoming more complex and diverse, and new funding programs have been implemented which require additional review on our part prior to the issuance of a decision. Further, since the designation/determination process is an exercise of ministerial discretion and the CRA's policy needs to be adapted to these new situations, some consultation with the Department of Finance is required. Finally, we are also receiving more files that do not qualify for designation, which in turn take longer to process in order to ensure that an explanation for the denial is provided.

Generally speaking, files are treated on a FIFO basis (i.e., first in, first out). Given this approach, available resources and competing workloads and priorities, the average turnaround time for municipal designation/determination cases for 2009-2010 and 2010-2011 is approximately 8 to 9 months from date of receipt. We are working at improving the process and resulting turnaround times. Further, we have fewer older files and are working at processing them in an expeditious manner.

Where a file includes all of the relevant information, the processing can be done more quickly. However, a factor which negatively impacts the processing of requests is that a high percentage of new cases lack the supporting documentation permitting a decision to be rendered. This lack of supporting documentation necessitates CRA follow-up with the client (often on several occasions), which creates additional delays in rendering a decision. To that effect, we are currently preparing an info-sheet on the designation process for RGI housing which will outline and explain the factors that are considered. The info sheet will also list the supporting documentation which must be submitted in order for the CRA to process a request for municipal designation/determination in respect to RGI housing. We expect this document to be available on the CRA website in the near future.

Additional Question

What is the recourse, if any, if the application is not accepted?

CRA Response:

Where a request for municipal designation is not accepted, the reasons for the denial are always provided to the applicant by the Canada Revenue Agency (CRA). While there is no formal administrative process to appeal the CRA's decision, the applicant may nonetheless request the CRA to reconsider its decision by writing to the Director of the Public Service Bodies and Governments Division.

If the denial arose as a result of an insufficiently supported request (e.g., the applicant did not provide sufficient supporting documentation), the applicant may reapply for municipal designation. The applicant should provide the relevant supporting documentation that demonstrates that it meets the criteria for municipal designation.

Where a request is denied because the CRA has found that it did not meet the criteria for municipal designation, the applicant can ask for a review of its request. In all cases, the applicant should provide an explanation as to why it disagrees with the CRA's decision (e.g., not all the relevant facts were considered, the CRA misunderstood some of the submitted facts, additional material facts are provided).

Alternatively, the applicant may apply for a judicial review to the Federal Court. The judicial review will not reverse an unfavourable decision, but may result in the request being returned to the CRA for another independent review

19. Where a non-resident of Canada parent corporation obtains a letter of credit from a European bank for its Canadian subsidiary company (Cansub) and bills Cansub for the commission fees paid to obtain the letter of credit, and Cansub re-invoices these commission fees to a third party in Canada, are the commission fees rebilled by Cansub exempt as a financial service?

    CRA Response:

    In order to determine the tax status of a particular supply, it is necessary to consider what the supplier did for the consideration received. The facts presented do not provide sufficient information on what the supplier, in each case, did to receive the commission. For that reason we are unable to determine whether the commission fees rebilled by Cansub would be a financial service. We would be pleased to consider a request, outlining all of the facts or circumstances surrounding the transactions, for a ruling or interpretation.

20. What is the current CRA policy regarding the late filing of a Section 150 election?

    CRA Response:

    Subsection 150(3) of the Excise Tax Act (ETA) sets out the form and manner of filing an election under subsection 150(1) of the Act. Specifically, the election shall be made in prescribed form containing prescribed information, specify the day the election is to become effective, and be filed by the member with the Minister in prescribed manner on or before the day on or before which a return under Division V for the reporting period of the member in which the election is to become effective is required to be filed. Because the legislation specifies that the form must be filed on or before a certain day, late-filed elections are not permitted.

21. When a large company that is considered a "large case" file that is restricted to a two year period for claiming ITCs finds ITCs beyond the statutory limits, can the large company use them against a Voluntary Disclosure assessment to reduce the tax payable? What is the process for applying these credits? Can they ever result in an overall refund?

    CRA Response:

    One of the conditions for a disclosure to be considered valid under the VDP is that it must be complete. This means that the taxpayer must provide full and accurate facts for all taxation years or reporting periods where there was inaccurate, incomplete or unreported information relating to any and all tax accounts. Therefore, for a period under consideration by the VDP we would adhere to s.296 of the ETA and assess the unreported GST/HST collectible and also any ITCs that were unclaimed and first claimable within that period resulting in the correct net tax for the period. The rules governing the assessment in s.296 would then be followed.

However, paragraph 19 of IC00-1R2, Voluntary Disclosures Program, outlines the circumstances under which VDP relief will not be considered. Among those circumstances are tax returns with no taxes owing or with refunds expected, i.e., there are no penalties involved; these would be handled using normal processing procedures established in the taxation centers. S.296 will govern whether a refund can be paid in a given circumstance.

22. When a person makes a voluntary disclosure that is accepted due to there being potential penalties, will the CRA also assess periods where the corrections are in the registrant's favor?

CRA Response:

Paragraph 19 of IC00-1R2, Voluntary Disclosures Program, outlines the circumstances under which VDP relief will not be considered. Among those circumstances are tax returns with no taxes owing or with refunds expected; these would be handled using normal processing procedures. Note that some credits/refunds may be restricted pursuant to s.296 of the ETA. The use of the VDP cannot circumvent the ETA to allow refunds not otherwise allowed by the Act.

23. CRA has long allowed auto repair companies to split-bill the insured and the insurance companies to allow the claiming of ITCs by the insured. Would CRA provide guidance on how vehicle expense claims will be treated where the insured is a "large business" and the repairs are on a specified vehicle in BC?

CRA Response:

Generally, an insurer is required to make payment in respect of an insurance claim only to the extent of the actual loss suffered by the insured in accordance with the terms of the insurance policy. The amount paid by the insurer to indemnify the insured will generally not include an amount for which the insured is entitled to claim an ITC in respect of that expense, i.e., the settlement will be net-of-GST/HST.

Where an insured is a large business and the repair expense is on a qualifying motor vehicle in British Columbia (BC) the same principle of indemnity would apply. As the insured large business would be eligible to claim an ITC that is related to the tax portion of the repair expense, the amount paid by the insurer under the principle of indemnity to the insured large business will not include the amount for which the insured large business is entitled to claim an ITC in respect of that repair expense.

Regardless of the principle of indemnity, a large business in BC must also recapture the portion of any available ITCs that are attributable to the provincial part of the HST that is paid or payable in respect of a specified property or service. Qualifying motor vehicles are specified property for purposes of the temporary recapture of input tax credits (RITC). Property and services acquired in respect of a qualifying motor vehicle (other than property or services for maintenance or repair) are also specified property and services for RITC purposes. Therefore, the RITC requirement will generally not apply to repairs made to a qualifying motor
vehicle and the insured large business would not be required to recapture the provincial part of the HST that is attributable to the ITC that was permitted under the principle of indemnity.

For example, Company A is a large business in BC. Company A had a damaged vehicle repaired under an insurance claim. The GST/HST treatment of the insurance claim provides that the insurance company indemnify Company A by paying the cost of repairs to the damaged vehicle less the amount attributable to the ITC that Company A is entitled to claim. Company A then claims the ITC that they are entitled to pursuant to subsection 169(1) of the Excise Tax Act. Pursuant to the RITC requirements, property and services acquired for repair of a qualifying motor vehicle are not specified property and services. Company A is not required to recapture the portion of the ITC that is attributable to the provincial part of the HST that arose under the insurance claim.

24. With many large businesses having employees occasionally travel to BC and Ontario, incurring HST on meals and telephone calls, is there some minimum amount of potential RITCs that the CRA will allow to be ignored so these registrants are not forced to change their reporting to NetFile?

CRA Response:

Under the comprehensive integrated tax coordination agreements between the Government of Canada and the Government of Ontario, and between the Government of Canada and the Government of British Columbia, the Minister of National Revenue is to administer and enforce the harmonized sales taxes payable under Part IX of the ETA, which includes the input tax credit recapture rules.

Subsection 236.01(2) of the *Excise Tax Act* (the ETA) provides that if a sales tax harmonization agreement with the government of a participating province relating to the new harmonized value-added tax system allows for the recapture of input tax credits, in determining the net tax for the reporting period of a large business that includes a prescribed time, the large business **shall add all or part**, as determined in prescribed manner, of a specified provincial input tax credit of the large business (an RITC).

Pursuant to subsection 278.1(2.1) of the ETA, if a person is, in respect of a reporting period of the person, a prescribed person or a person of a prescribed class, the person shall file its return for the reporting period by way of electronic filing in the manner specified by the Minister for the person.

The *Electronic Filing and Provision of Information (GST/HST) Regulations* (the Regulations) prescribe persons, and classes of persons, for the purposes of subsection 278.1(2.1). Pursuant to paragraph 2(b) of the Regulations, a person that is a registrant (other than a selected listed financial institution) that is a large business (as defined in subsection 236.01(1) of the ETA), at any time in the reporting period or in a preceding reporting period of the person in the fiscal year, is a prescribed person in respect of a reporting period of the person that is in a fiscal year of the person. Therefore, if a person is a large business, as defined for purposes of the RITC rules, in a reporting period or a preceding reporting period within the same fiscal year, the person is required to file electronically for that reporting period, whether or not they have actual RITCs to report.

Persons failing to file electronically when so required may be subject to penalties and persons failing to report RITCs when so required may also be subject to additional penalties. These enforcement mechanisms are provided to ensure that sufficient and accurate information is provided by GST/HST registrants to enable the government to administer the GST/HST and to allocate revenues between the federal government and the participating provinces under the HST.

Income Tax Questions

1. My Account – Corporate Accounts

a) We understand that the CRA has been planning an enhancement to the My Account system to allow transfers between the various business number accounts of a corporation (corporate tax, GST, source deductions) and /or between fiscal years. Can you advise if this enhancement is still planned? If so, when might we see it?

b) Another proposal was to post Refundable Dividend Tax On Hand (RDTOH) and General Rate Income Pool (GRIP) balances on My Account. Can you advise on the status of this enhancement?

c) Would the CRA consider adding the ability to change the corporation address online through My Account?

d) Further to question #20 at the 2010 ICAA Roundtable, would it be possible for capital dividend account calculations that have been completed (that we understand are filed in the taxpayer's permanent file) to be accessible via Represent a Client?

e) Further to the discussion at the 2010 ICAA Roundtable, can you advise us as to the status of accessing information about trusts and deceased taxpayers?

CRA Response:

a) The My Account service provides access to individual income tax and benefit accounts online. The My Business Account service provides access to a business' GST/HST, payroll, corporation income taxes, excise taxes, excise duties and other levies accounts online. An authorized representative can access the information available on My Account or My Business Account through our online Represent a Client service.

The Transfer Payment feature of the My Business Account View Account Balance and Activities service offers business owners and authorized third party representatives the ability to transfer a payment in an interim period between program accounts of the same 9-digit business number. This service was implemented in April 2011. While this feature is not yet available for Payroll accounts, the Make online requests service is available to request a transfer to a Payroll account.

The facility to transfer from one business number to another is tentatively scheduled for April 2013.

b) The CRA is actively studying the requirements for making Refundable Dividend Tax on Hand (RDTOH), General Rate Income Pool (GRIP) and non-capital loss balances available on My Business Account. A 2012 target date has been established for potential implementation of this enhancement. While we are advanced in our development for offering RDTOH and non-capital loss balances on My Business Account, GRIP is considerably more complex, and to ensure that we present valid and useful information, it may take more time.

c) My Account and My Business Account are two different services aimed at different taxpayers groups: individuals and businesses. The CRA is currently developing system requirements to allow business taxpayers to maintain their own address information online through My Business Account. The intent is to provide this option to business taxpayers in 2012 as part one of our scheduled system releases. However, we are unable to confirm a firm implementation date at this time.

d) The CRA is working to offer capital dividend account balance information through My Business Account; however, the complexity requires us to develop its online availability on a slower track. There is no firm implementation date at this time.

e) CRA is currently reviewing electronic services for T3 (trust) returns. However, it is too early in the review to give any type of timeframe as to when electronic services will be available.
For deceased individuals, the representative would not be able to access any information through My Account, but would be able to access the information (only if an authorized legal representative) through Represent a Client. The link for Represent a Client is www.cra.gc.ca/representatives.

2. Time Limit on Dividend Refund

Subsection 129(1) of the Act provides for a dividend refund to be paid if a return is filed within three years of the end of the applicable taxation year, but not thereafter. We understand that a rectification, remission order or other action might be considered by the CRA where that time to file is missed. Otherwise, under the law as it stands, the refund is lost. Please comment on what actions might be acceptable to the CRA and available to taxpayers to rectify the lost refund.

CRA Response:

Where the Minister has not paid a dividend refund upon issuing the assessment of tax for the year, the corporation will be entitled to receive the refund if application therefore is made under subsection 129(1) of the Act within the three or six year reassessment periods provided in subsection 152(4) of the Act, read without reference to paragraph 152(4)(a) of the Act. There is no provision in the Act to apply for the refund after that period.

A request to vary the income tax consequences of transactions that have already taken place will only be considered if such variance would amount to a rectification of an error and only if there is unequivocal evidence substantiating the fact that an error was made. In Income Tax Technical News #22, dated January 11, 2002, CRA stated its administrative policy on rectification as follows:

> We will normally accept rectification orders, especially when we have had an opportunity to contest the order in Provincial Court.
>
> In the absence of a valid rectification order, we will assess on the basis of the legal documents and the legal rights that they create. Auditors have no choice but to assess on the facts present at the time of assessment or audit.
>
> We are not as concerned about correcting documentation that is in error because it does not reflect the true intention of the parties involved…In any event, we want to be informed of any application for a rectification order.
>
> Our general policy is that where the amendments are integral to achieving the original intentions of the parties, the application for rectification likely will not be opposed… The threshold for obtaining a rectification order is quite high. The court will have to be persuaded that the documentation of the transactions in question does not reflect the true and primary intentions of the parties. We will rely on Justice to advise us which cases meet the doctrine of rectification.

We cannot envision a situation in which an action, whether a rectification order or a remission order or other action, would enable a taxpayer to obtain a dividend refund beyond the period described above.

Additional Question
Is a remission order available?

CRA Response:

A taxpayer may make an application for a remission order, however the Legislative Policy Directorate has received several remission orders in respect of subsection 129(1) of the Income Tax Act but none have been successful.

3. High Net Worth Audit Initiative

There has been significant media exposure recently regarding what has been referred to as the High Net Worth Audit Initiative. What is the premise behind such audits? Could you please outline the specific objectives and expected outcomes of this project, as well as the actions CRA intends on taking based on the information it receives.

The letters that we have seen so far from the CRA appear to be very invasive and require clients to respond within 30 days. Given the complexity of the affairs of many high net worth persons, 30 days to respond seems rather short. Will the CRA be flexible in enabling a longer time period to respond?

CRA Response:

The Organisation for Economic Co-operation and Development (OECD) formed a 14 country focus group to study the size and environment of high net worth individuals. This study produced a number of conclusions and recommendations on how a tax administration might deal with this segment of the population.

- The CRA has a program to examine high net worth individuals and their related entities. The population that is under review includes:
    - Individuals who together with related economic entities have a net worth of about $50 million or more,
    - The number of entities in the group is approximately 30 or more, and
    - The entities in the group are not already part of our Large Files program.
- Our approach to high net worth individuals has been to reinforce our risk assessment by conducting a comprehensive review of the entities in the related group. We previously tended to examine the entities on a one by one basis.
- Groups that are risk assessed and deemed to be “high risk” are referred for audit by our Large Files program. This initiative is ongoing.
- The objective of this program is to monitor and, as necessary, enhance tax compliance by high net worth individuals and their related entities.
- The 30 day period to respond to a request for documents and information is frequently used by the CRA in similar requests. The CRA is sensitive to individual circumstances and the deadline may be extended depending on the particular situation.

4. Voluntary Disclosures

Paragraph 46 of IC00-1R2 states the following:

> *Taxpayers are expected to remain compliant after using the VDP. Under normal circumstances, a taxpayer is entitled to utilize the benefits of the VDP only one time. A second disclosure for the same taxpayer may be considered by the CRA if the circumstances surrounding the second disclosure are beyond the taxpayer's control. At the time of making a second disclosure, a taxpayer must provide their name and specify that they had previously made a disclosure. If it is discovered during the course of the disclosure review that the taxpayer had previously made a disclosure and the*

taxpayer has not disclosed this fact, the CRA may deem the disclosure to be invalid for VDP purposes. If the second disclosure is for the same issue that was previously denied as incomplete due to information not being received by the stipulated date, then the second disclosure will be denied.

Given the above:

a) Can the CRA provide some examples of the type of circumstances that might be considered to meet the test of being "beyond the taxpayer's control"?

b) As the VDP has been in place for some time, and as taxpayers change accountants, it is certainly possible that over time newly appointed accountants may not be aware of whether or not clients have ever taken advantage of the VDP and the clients may not necessarily be aware of the intricacies of the filings that have taken place in the past, particularly if penalties that were avoided were modest. When taking on a new client, the incoming accountant would want to make an attempt to determine whether or not the new client has ever made use of the VDP, just like it may make sense to verify CDA balances and other carry-forwards wherever possible. Does the CRA track voluntary disclosures to the point of being able to advise whether a taxpayer has ever used the program previously (and if so, would it be prepared to provide this information)?

c) We have seen a number of situations where the requirement that a Voluntary Disclosure include matters at least one year past due (as set out in paragraph 39 of IC00-1R2) appears to have inequitable results. The exact same deficiency results in late filing penalties when the taxpayer corrects the matter three months after the deadline, while a taxpayer who delays dealing with the matter for three years escapes penalties. In many cases, interest charges accrue during the intervening period, but this is not the case where the deficiency is a failure to file disclosure statements, such as T1135 forms for foreign property or T2062 forms for distributions from a Trust or Estate to a non-resident beneficiary.

We recognize the CRA does not wish the Voluntary Disclosure program to become a safe haven, rendering late filing penalties irrelevant, however we question whether there might be a means of achieving that objective which would not provide an incentive to defer addressing such deficiencies. For example, the restriction of voluntary disclosure to apply only once in respect of the same or similar situations would seem to prevent a taxpayer's use of the program to continually file disclosure forms late without penalty. Would the CRA consider a review of its policies in this area with a view to ensuring that taxpayers who are more proactive in correcting deficiencies are not subject to penalties on a harsher basis than those who are less proactive in this regard?

CRA Response:

a) Generally, taxpayers are provided one opportunity to correct their tax affairs via the VDP and to receive relief from penalties and prosecution in relation to the amounts disclosed. A key principle of the program is that taxpayers remain compliant from this point forward and do not make the same errors/omissions in the future.

The CRA realizes that unforeseen events may prevent a taxpayer from meeting their tax obligations. For example, if following a disclosure for unfiled returns, the taxpayer receives an amended T4 from his employer, the CRA would allow the taxpayer to file a second disclosure given that the taxpayer had no control over his employer making amendments to the T4.

The CRA will consider a second disclosure if the errors or omissions relate to different tax issues or business lines than were involved in the first disclosure. For example, if an employee operates a small business as well as maintains part-time employment, a disclosure relating to unreported T4 income could be different than a disclosure relating to remitting source deductions of employees of the small business. Also, correcting errors and omissions relating to income taxes could be different than those relating to the GST/HST. The principle factor is that the second disclosure is not related in any way to the first disclosure.

b) The VDP tracks disclosures received and could provide information concerning previous use of the program to the taxpayer or an authorized representative. However, the best source as to whether a

taxpayer has used the VDP previously is the taxpayer themselves. The VDP always responds to the taxpayer with a decision letter. For more information about the VDP or how to contact us, taxpayers or their authorized representatives are encouraged to visit www.cra-arc.gc.ca/voluntarydisclosures.

(c) The VDP contributes to CRA's overall compliance strategy by encouraging taxpayers to voluntarily come forward and correct their tax information. It is not intended to serve as a vehicle for taxpayers to intentionally avoid their legal obligations under the acts administered by the CRA.

You are correct that the VDP will not consider policies that render the penalty structure of the different Acts as irrelevant. Therefore, a period of time is necessary to allow the civil penalty structure to work as the incentive to correct the deficiencies identified. Taxpayers who knowingly defer addressing deficiencies in their tax reporting obligations run a higher risk of greater penalties and possible prosecution in cases where the CRA discovers the deficiency. The mitigation of those possible greater penalties is considered enough incentive to correct the deficiencies as soon as possible after their discovery. Not correcting the deficiencies will strengthen the possibility of those greater penalties and possible prosecution.

5. Foreign Exchange

Can the CRA comment on whether they believe an average foreign exchange rate for a year can be used on a sale of a foreign asset when that asset is sold at a specific time in the year?

CRA Response:

The nature of the asset sold and whether the transaction is considered to be on account of income or capital will determine what foreign exchange rate should be used.

If a transaction is on account of income then the CRA will accept any method used to determine foreign exchange gains or losses provided that the method is in accordance with generally accepted accounting principles (GAAP). Income transactions are normally recorded in the books at the exchange rate prevailing on the date of the transaction (i.e. the "spot" rate). Interpretation Bulletin IT-95R (Foreign Exchange Gains or Losses) states at paragraph 7 that '…the method used should be the same for both financial statement and income tax purposes...' Where it is not practical for a taxpayer to express each transaction at its spot rate, paragraph 8 of IT-95R states that the CRA will accept the use of either the average rate of exchange during the year or a fixed rate. However, in a situation such as the one you have described involving only a single foreign asset transaction, which we will assume for purposes of this question is on account of capital, the average rate would not be appropriate and the spot rate should be used.

6. Eligible Non-Residential Buildings

Regulation 1104(2) defines an "eligible non-residential building" for purposes of Regulation 1101(5b.1) with the result being that a non-residential building is able to be placed in a separate class so it will be eligible for enhanced CCA rates depending on its usage in each year of ownership. The definition in Regulation 1104(2) notes that a building acquired on or after March 19, 2007 will be an eligible non-residential building, unless it was used, or acquired for use, by any person or partnership before March 19, 2007.

a) Can the CRA confirm that a taxpayer who acquires a non-residential building from its original owner may file a Regulation 1101(5b.1) election in respect of that building, provided its original owner did not acquire it before March 19, 2007. For example, where a taxpayer acquires a building in January, 2011, and that building was constructed in 2008, it could not have been used or acquired for use by any person or partnership prior to March 19, 2007, so any taxpayer subsequently acquiring that building could file a Regulation 1101(5b.1) election in the year of acquisition.

b) Assuming the answer to the above is affirmative, could a taxpayer file a Regulation 1101(5b.1) election, and claim the enhanced capital cost allowance rates, in respect of an eligible non-residential building acquired from a related party who had not filed such an election in the year it was acquired?

CRA Response:

a) It is a question of fact as to whether a particular building was used or acquired for use by any person or partnership prior to March 19, 2007. For the purposes of the definition of "eligible non-residential building" in subsection 1104(2) of the *Income Tax Regulations* (Canada) (the "Regulations"), if a particular building has not been used by a person or partnership (referred to as the "previous owner or owners") at any time prior to March 19, 2007, the fact that it may have been used by the previous owner or owners after March 18, 2007 will not, in and of itself, prevent that building from qualifying as an "eligible non-residential building" of a taxpayer.

Accordingly, in the above-described example, the fact that the building, which was constructed in 2008, was used or acquired for use by a previous owner or owners before it is acquired by a taxpayer in 2011 will not prevent the taxpayer from being able to file a subsection 1001(5b.1) election, provided that the building otherwise meets the conditions in the definition of "eligible non-residential building" in subsection 1104(2).

b) Where a taxpayer (the "transferee") acquires a building from a non-arm's length person (the "transferor") after March 18, 2007 and the transferor did not elect under subsection 1101(5b.1), the transferee may still elect under subsection 1101(5b.1) of the Regulations, provided that the building was never used, or acquired for use, by any previous owner or owners before March 19, 2007, before it is acquired by the transferee and provided that the building otherwise meets conditions in the definition of "eligible non-residential building" in subsection 1104(2) of the Regulations.

7. Capital Dividend Account - Life Insurance

Does the CRA accept the decision of the Federal Court of Appeal in Innovative Installation Inc., 2010 FCA 285, that life insurance proceeds paid directly to a creditor of a corporation, and used to discharge a debt of that corporation, is received by the corporation for purposes of the determination of that corporation's capital dividend account?

Assuming the CRA does accept this decision, would the CRA also confirm that any such amount previously excluded in computing a corporation's capital dividend account is now appropriately applied to increase the capital dividend account balance, as the balance is computed based on all transactions since incorporation?

CRA Response:

The *Innovative Installation* case involved a group creditor insurance policy issued to the corporation's bank. The corporation obtained key person insurance to provide financial security. The bank was the beneficiary under the policy and the corporation paid the premiums on the policy. On the death of the life insured, the bank applied the life insurance proceeds against the corporation's loan as it was contractually obligated to do. The corporation added the life insurance proceeds to its CDA and the Minister reassessed on the basis that the corporation was not the named beneficiary of the policy and therefore did not receive the proceeds in consequence of the death of the life insured.

The Tax Court found that the corporation benefited from the insurance proceeds by having its loan paid off and that it "received" the proceeds within the definition of CDA in subsection 89(1), despite the funds not passing directly through its hands. Accordingly, the corporation was entitled to add the proceeds to its CDA.

The FCA denied the appeal by the Minister. The FCA held that since the bank was obligated to pay the proceeds to the corporation's benefit by discharging the loans, the corporation received the proceeds.

In light of the FCA decision in *Innovative Installation*, it is now the CRA's position that, to the extent that the other conditions in the CDA definition in subsection 89(1) are met, a corporation may increase its CDA balance by the life insurance component if it is able to demonstrate that the proceeds of a life insurance policy were paid directly to a financial institution and the institution reduced the debt of the corporation under contract between the corporation and the institution. The application of this position is effective as of October 27, 2010 (the date of the FCA's decision) and is limited to fact situations that are similar or identical to the *Innovative Installation* decision. The CRA will not retroactively adjust the CDA of a corporation for a prior year, nor reverse a taxable dividend that was previously assessed under subsection 184(3). Rather, the CDA balance will be adjusted so that the prior year insurance amount would increase the balance in the CDA on or after October 27, 2010.

The CRA's position with respect to life insurance policies as outlined in paragraph 6 of IT-430R3 will be revised accordingly.

Additional Question

Explanation as to why it would not be considered retroactively for adjustment and refund?
What if paid Part 1.3 tax and penalties? (I.e. overpayment)

CRA Response:

Our response to Roundtable question 7 is consistent with CRA's policies on reassessments. Please refer to paragraph 4 of IC75-7R3 and paragraph 5 of the Index to the Income Tax Interpretation Bulletins and Technical News for details on these policies.

8. Costs of Responding to CRA Enquiries

Paragraph 60(o) of the Income Tax Act provides that amounts paid by the taxpayer in the year in respect of fees or expenses incurred in preparing, instituting or prosecuting an objection to, or an appeal in relation to, an assessment of tax are deductible. However, taxpayers often incur costs to respond to CRA enquiries, whether such costs are professional advisors' costs or costs to obtain documents (for example, cancelled cheques from their financial institutions). What is the CRA's position on the deductibility of such costs? We recognize these are not covered under the Act, however it seems unreasonable that a taxpayer who promptly responds to requests for information, and is able to resolve any issues without the need for a Notice of Objection, or even a reassessment, is denied a deduction, where a taxpayer who procrastinates, is reassessed and then sends the same information to the CRA via a formal Objection receives a deduction for their incurred fees. As professional advisors, we would not wish to be forced to advise our clients that, if they do not respond to CRA's information requests until they are reassessed, and then respond by way of Notice of Objection, this would carry the financial advantage of deductible costs. Your comments please.

CRA Response:

In the determination of income from a business or property, a taxpayer's legal, accounting and other costs of representation are generally deductible under section 9 of the Act, including expenses of contesting a reassessment or a proposed reassessment. This was the view expressed in *Premium Iron Ores Limited v MNR*, 66 DTC 5280 (SCC). The Agency's view, as stated in paragraph 2 of IT-99R5 (Consolidated) *Legal and Accounting Fees* is that legal and accounting fees are allowable deductions where they are incurred in connection with normal activities incidental or necessary to the earning of income from a business or property. In the Agency's view, that includes expenses of representation related to the reassessment, proposed reassessment, and Notice of Objection stages.

In the determination of income from an office or employment, deductions are limited to those provided for in section 8 of the Act. Section 8 does not permit the deduction of fees or expenses incurred in filing a Notice of Objection or an appeal.

Paragraph 60(o) was enacted to provide a deduction to all taxpayers, including those persons reporting income from sources other than business or property, such as salary and capital gains. The wording of

paragraph 60(o) of the Act limits the deductions to "... amounts paid by the taxpayer in the year in respect of fees or expenses incurred in preparing, instituting or prosecuting an objection to, or an appeal in relation to..." an assessment or decision under the *Income Tax Act*, the *Unemployment Insurance Act*, the *Canada Pension Plan Act* or the *Quebec Pension Plan*. In addition, this provision permits taxpayers to deduct those costs even if they do not relate to the taxation year in which they were incurred or paid.

In addition, paragraph 7 of IT-99R5 (Consolidated) states,

> "A taxpayer may deduct amounts expended in connection with legal and accounting fees incurred for advice and assistance in making representations after having been informed that the taxpayer's income or tax for a taxation year is to be reviewed, whether or not a formal notice of objection or appeal is subsequently filed." (Underline added.)

Legal and accounting fees, therefore, are deductible once the taxpayer has been informed of an audit or that a particular tax return is otherwise being reviewed. In addition, expenses incurred in connection with those legal and accounting fees are also deductible. It would be determined on a case by case basis whether expenses such as costs to obtain documents (including cancelled cheques obtained from banks) would be deductible.

9. Gross negligence penalty (for false statement/omission) pursuant to ITA 163(2)

Generally the 50% gross negligence penalty is applied only after an auditor prepares, and we expect, has had approved by a team leader, a "penalty report". However, we understand an auditor will not provide such a report to the taxpayer at the conclusion of the audit. Accordingly, it appears that the penalty can be assessed without considering the taxpayer's submissions.

a) Please comment on the process to follow so that the taxpayer has opportunity to make submissions prior to the conclusion of the audit in response to the penalty report.

b) Please advise if there are circumstances under which the penalty report will be provided to the taxpayer at the conclusion of the audit (and procedure to follow to obtain it). Currently, a taxpayer must file an Objection and request a copy of the penalty report pursuant to the *Access to Information Act*, a process that is time consuming and contributes to significant delays.

c) The onus of proof is on the Crown pursuant to subsection 163(3) and case law establishes that the this burden is "heavy" (*Corriveau,* [1999] 2 C.T.C. 2580 (TCC)), "greater than on a balance of probabilities, and closer to the criminal onus under the *Criminal Code*" (*Lust,* 2009 CarswellNat 3722 (TCC under appeal)) and "a high degree of negligence tantamount to intentional acting, an indifference as to whether the law is complied with or not" (*Venne,* 1984 C.T.C. 223 (FCA)). Please discuss how the CRA evaluates a fact situation in light of the standards imposed by case law.

CRA Response:

a) As part of an audit, the auditor informs the taxpayer if the gross negligence penalty is being considered. The proposal letter includes all the reasons supporting the application of the penalty, and the taxpayer is provided with the opportunity to present a defence, as with any other adjustments proposed. The auditor summarizes any arguments the taxpayer submits as a defence and comments on them individually. The gross negligence penalty is not applied without the taxpayer first being advised in writing that a penalty is being considered. The penalty report is only finalized after the taxpayer has been provided the opportunity to reply to the proposal letter.

b) The Penalty Recommendation Report is not routinely provided to the taxpayer in the course of an audit; however the proposal letter should contain all the information necessary to allow the taxpayer to refute the penalty recommendation.

(c) Under subsection 163(3) of the Act, the burden of proof lies with the Minister to prove that the gross negligence penalty applies. Auditors are aware of the requirement to demonstrate that the taxpayer acted in a grossly negligent manner, knew, or ought to have known, that an error, omission, or false statement had occurred in the income tax return. Therefore an auditor's penalty report contains appropriate evidence as well as the auditor's rationale for applying the penalty.

Many factors are examined when considering the application of subsection 163(2) of the ITA including the materiality of the amount in question, the maintenance of books, records and preparation of tax returns, the taxpayers' knowledge of tax matters, awareness of degree of care required, prior contact with the CRA, past reporting of similar income, the nature of the false statement or omission, and the taxpayer's misinterpretation of the legislation.

10. GAAR Committee Update

What is the current case load before the GAAR Committee? Can the current inventory of cases be broken down into groups of files by issue and by volume?

CRA Response:

The CRA recently released GAAR statistics updated to June 30, 2010. It should be noted that 905 cases were referred to the GAAR Committee from the time the rule was introduced in 1988 until June 30, 2010.

Summary of Issues and Dispositions before the GAAR Committee as of June 30, 2010

Issue	GAAR Applied	No GAAR	Total
Kiddie tax	68	6	74
Offshore trusts	11	1	12
Cross-border leases	11	0	11
Part XIII tax	3	9	12
Losses, rental	11	2	13
Kiwi loan	14	0	14
Losses and stop losses	9	5	14
Charitable donations	14	10	24
Capital gains*	24	9	33
Interest deductibility*	18	17	35
Debt parking	17	7	24
Indirect loans	28	3	31
Debt forgiveness*	33	10	43
Capital and non-capital losses	36	18	54
Loss creation via stock dividend	57	0	57
Part I.3 tax	38	11	49
Provincial GAAR	0	3	3
Surplus strips	111	31	142
Treaty exemption claims	5	2	7
Tower structures	1	3	4
Foreign tax credits	13	3	16
Income splitting	8	3	11
Partnership issues	15	6	21
Miscellaneous	107	94	201
Total	652	253	905

11. Civil Penalties

Can the CRA please update us on the application of civil penalties, particularly any developments since the last Roundtable? We would specifically be interested in knowing the extent to which penalty assessments have been reversed subsequent to assessment (eg. at the Objection stage or in settlement of an appeal to the Courts) and whether there are any cases currently moving through the process to be heard by the Tax Court.

CRA Response:

The third-party penalty legislation was enacted in June 2000. Since June 2000, 19 promoters and 27 tax preparers have been assessed $65.5 million in third-party penalties. Audits of 52 promoters and 23 tax preparers are currently underway. Some third parties face criminal prosecution in addition to civil penalties For example, a Toronto tax preparer who claimed $11.7 million in fictitious charitable tax receipts for clients was sentenced to two years in jail for receipting fraud. The charities that participate in these schemes may also face consequences. So far, the CRA has revoked the registration of 40 charities that have participated in gifting tax shelter schemes.

We are not aware of any third party penalties being reversed subsequent to assessment and can confirm that three third party penalty cases are currently before the Tax Court of Canada.

12. Trusts – Residency and Other Projects

Can the CRA provide its comments on the updated assessing position (if any) for the determination of residency of a trust and validity of the trust's constitution pursuant to the recent decisions in Garron—which held that residency of the trust is where the central management and control is actually exercised, and Antle—which held that the trust was not properly constituted and therefore invalid.

What are the ongoing concerns that the CRA has with trusts (beyond the above issues) and what projects are the CRA working on to address these concerns?

CRA Response:

Trust Audits

The Agency has had a regular domestic trust audit program for several years. In its 2005 report, the Office of the Auditor General expressed a number of concerns about the Agency's reviews for tax returns of domestic trusts. The OAG was concerned that tax officials were auditing a smaller portion of inter vivos trusts, as compared with testamentary trusts and that most of the testamentary trusts selected were trusts which had requested a clearance certificate.

At that time, the Agency responded that, given the dynamic and evolving nature of trusts, the Agency was reviewing its approach to verifying domestic trust income tax, including its audit coverage of inter vivos trusts.

Audit activities in relation to the taxpayer base are designed in part to identify cases of non-compliance, ensure fairness in the self assessment systems, and maintain the integrity of the tax system. Trusts, as taxpayers, are also subjected to these audit activities. Areas of review in regards to trusts include whether the trust was properly constituted, its residency, whether income is properly reported and whether deductions claimed were deductible pursuant to the provisions of the *Income Tax Act*. This is no different than other taxpayers such as individuals or corporations.

Aggressive Tax Planning

The growing use of trusts as part of tax minimization or avoidance strategies has raised concerns about their impact on both federal and provincial tax bases. As a result, the Agency has increased its audit activities in this area to ensure that their use and the results achieved comply with the provisions of the Income Tax Act.

The CRA will continue to be vigilant in this area and will challenge the use of trusts in abusive tax avoidance schemes through the use of all available tools, including the application of the federal and/or provincial general anti-avoidance provisions. The Garron and Antle decisions do not, in our view, provide new tools to challenge these arrangements, but rather simply provide clarification as to the application of the residency of a trust or the validity of a trust argument.

Conclusion

The Agency intends to continue its focus on inter vivos trusts since results achieved to date indicate that there are significant compliance risks associated with the use of trusts.

13. TFSA Excess Contributions

What were the results in the sending out of 72,000 excess TFSA contribution letters? In particular, can the CRA comment on whether penalties were waived in certain circumstances?

CRA Response:

On June 1, 2010, the Canada Revenue Agency (CRA) mailed over 72,000 proposed TFSA returns to individuals who may have over-contributed to their TFSA, seeking more information about their situation. Over 4.8 million Canadians have opened a TFSA in 2009, so the 72,000 individuals who received this letter represent less than 2% of all TFSA holders. In November 2010, the CRA sent a follow-up letter to the approximately 14,500 individuals who had not yet responded to the June mail-out. This letter outlined the various options that were available to the individuals to resolve their possible excess TFSA contribution situation.

The Honourable Keith Ashfield, former Minister of National Revenue, issued a News Release concerning TFSAs dated July 26, 2010. He stated, “Our government has made the decision to be as flexible as possible by waiving taxes on excess contributions for the first year of the program where a genuine misunderstanding of the TFSA contribution rules occurred.” The CRA has received numerous requests for relief of tax. Each request for relief is reviewed individually and a letter explaining our decision is sent. Generally, in order for relief to be granted, the excess contribution has to have been made as a result of reasonable error and the contribution has to be withdrawn from the TFSA without delay.

Here are statistics as of April 29, 2011.

Total replies received 58,500

Total payments received 42,400

Total requests for relief of tax 22,800

Total requests for relief processed 20,600

Total tax waived $4.0 million

There are approximately 2,200 cases that require additional analysis before a response can be sent.

Additional Question - Error on TFSA contribution room

A taxpayer contributed over the years and maximized his/her TFSA, yet statement issued by the CRA shows that he/she still has contribution room. Can the CRA system be corrected so the taxpayer would not run into the risk of over contribution and being penalized?

CRA Response:

- In order to provide an annual snapshot of TFSA contribution room to Canadians, we added information to the T1 notice of assessment. While it was understood that some of the amounts provided might not be fully current, either because CRA had processed their tax return before additional information from financial institutions could be incorporated and reflected or because individuals were active with regards to their TFSA account, it provides a useful reminder to Canadians about the availability of TFSA as an investment choice and therefore increased awareness. The notice clearly indicates that it was prepared on the basis of information available in early 2011 and suggests that individuals verify the number if they feel it is inaccurate or out-of-date.

- As part of the CRA's efforts to provide information to Canadians with regards to their TFSAs, we have provided Canadians with a number of ways to validate their available TFSA room. Information from financial institutions is received and validated as quickly as possible and updates are made to the TFSA contribution room of every individual . These changes are uploaded daily to our online service options such as My Account and Quick Access, making them an excellent source for individuals to obtain the most up-to-date information about their TFSA contribution room. Updated TFSA contribution room is also available through the Tax Information Phone Service (T.I.P.S.).

- Please refer to "Where can I find my TFSA contribution room information?" on the CRA web site at the following address: www.cra-arc.gc.ca/tx/ndvdls/tpcs/tfsa-celi/cntrbtn-eng.html for complete information.

14. GRIP and Losses Carried Back

Where a loss is carried back and offsets high rate income in the prior year, the general rate income pool (GRIP) is reduced as a consequence. Is the GRIP reduced on the general rate factor (GRF) applicable to the year in which the loss was realized, or the year in which it was applied?

For example, if a corporation has a calendar year end, realized high rate income in 2008 (GRF of 68%) and realizes a $100,000 loss in its 2011 fiscal year (GRF 70%) which it carries back to 2008, would the GRIP be reduced by $68,000 or $70,000? According to the definition of GRIP provided in subsection 89(1), it appears that the appropriate GRF to be used is the GRF in the year the loss arises but CRA Schedule 53 is unclear in that regard as it appears to suggest that the GRF in the year the loss is carried back to should be used.

CRA Response:

The description of H in the calculation of element B in the definition of GRIP in subsection 89(1) indicates that the corporation's General Rate Factor to be used is the one relevant for the particular taxation year, meaning the taxation year in which the loss originated.

In other words, where a loss is carried back to a prior taxation year, element B will reduce the amount of the GRIP. That reduction will be the amount of the loss carried back multiplied by the relevant General Rate Factor of the loss taxation year, or $70,000 in the example provided.

Additional Question - Schedule 53

Tax practitioners acknowledged and accepted that for loss carried back, the General Rate Factor (GRF) to be used is the GRF in the year the loss arises; however, the wordings in Part 2 of Schedule 53 pertaining to the GRF is vague and suggested that CRA should improve the wordings of the form.

CRA Response:

The concern is brought to HQ's attention.

15. Charitable Donations

Some taxpayers have received requests for supporting documents, such as cancelled cheques, to support charitable donation claims. Many financial institutions discourage and/or charge additional fees for returning copies of cheques. As well, many charities accept payment in other forms, such as by cash or credit card.

a) Under what circumstances is an official charitable donation receipt not considered adequate support for charitable donation claims?

b) Will the CRA update its guide book as the guide currently indicates only the official receipts are required?

CRA Response:

a) As part of its compliance activities, the Canada Revenue Agency (CRA) conducts projects to establish the level of possible non-compliance in a particular sector. In order to fully validate any deduction or credit claimed on a tax return, including charitable donation receipts, the CRA can ask for proof of payment such as cancelled cheques, credit card slips/statements, bank statements, etc to substantiate that claim.

This review is predominantly based upon pre-determined risk assessment criteria and is very limited in scope, although some random reviews are also deemed necessary. The vast majority of Canadians are honest and comply with the law. However, there are also those individuals who seek to exploit the generous tax incentives the government has put in place to support charitable giving. As a result individuals may be asked for additional documentation to support their charitable claim to ensure the integrity of the system.

b) Our T1 guide is reviewed on an annual basis and all suggestions are considered when amending the guide. However, we are unable at this time to confirm the changes that will be made to any future guides. We can confirm that CRA does inform the public that a claim may need to be supported in the form of cancelled cheques, bank statements, or other documentation as noted in the following 2010 News Release:

http://www.cra-arc.gc.ca/nwsrm/rlss/2010/m06/nr100603-eng.html

16. 10/8 Insurance Structures

Please update us on the status of the CRA's review of the 10/8 insurance strategy. We would be interested in knowing whether the CRA has established a target for completion of this review, and communication of its position regarding the strategy.

CRA Response:

While our audits are progressing, we are not in a position to release any information at this time, nor are we willing to commit to a date for such release.

17. Employees Profit Sharing Plan

Assume in a hypothetical situation that an employer creates an employees profit sharing plan ("EPSP") for the benefit of its employees that is a bona fide EPSP fully compliant in all respects. In a subsequent year (say year 3 of the EPSP trust) the employer makes a payment out of its profits to the trustee under the plan (in accordance with the terms of the EPSP), but the trustee inadvertently fails to allocate the entire amount received to the employees, either contingently or absolutely.

a) Does the arrangement cease to be an EPSP as a consequence of the above?

b) If the answer to (a) is yes, would the loss of status as an EPSP be retroactive to the inception of the plan or at some other specific time?

c) If the answer to (a) is yes, what is the appropriate income tax treatment of the payment received by the trustee of the EPSP?

d) If the answer to (a) is no, can the CRA recommend a course of action that the trustee should follow so that the EPSP becomes fully compliant?

CRA Response:

We are unable to answer this question sine this matter is being further investigated by Finance (as stated in the 2011 budget), and we feel it would be inappropriate to anticipate the outcome of consultations that have not yet been undertaken.

18. Matching Program and EFILE

Numerous examples of concerns with the matching program have been provided through this forum in previous years. We are not asking the CRA to address these examples, but the broader issue. The CRA must verify that income is properly reported, which often imposes costs on taxpayers and their advisors. We submit there should be a focus on making the verification process as efficient as possible, both for the CRA and for taxpayers and their advisors.

Often, the information requested of the taxpayer would have been provided with a paper filed return, leading some practitioners to question their continued involvement in the EFILE process. Frequently, reassessments cannot be resolved within the deadlines for a Notice of Objection, leading practitioners to consider a Notice of Objection as the first response to a reassessment to minimize costs for the client.

a) Can the CRA comment on the turnaround time for addressing responses to a reassessment? Is there some way to expedite resolution to avoid the choice of filing a Notice of Objection or allowing a client's appeal rights to expire?

b) What, if any, steps is the CRA prepared to take in order to enhance the efficiency of the EFILE process from the practioners' perspective—that is, to reduce the costs imposed by the matching program, and reduce erroneous reassessments? When can we expect these steps to be implemented? For example, in addressing Question 14 at the 2010 Round Table, CRA noted Headquarters was investigating methods of accepting .pdf files in the EFILE process, and the response to Question 11 noted that issues related to T4 PS slips had also been communicated to Headquarters.

CRA Response:

a) Tax Centre staff are instructed to process a request to reverse a T1 Matching reassessment within 30 days of receipt. If additional information is required before we can reverse the reassessment, it could take longer than the established timeframes. As the time limit for filing an objection is the later of 90 days from the date of the Notice of Reassessment and one year from the taxpayer's filing due date, the reversal action, in most cases, should be completed in advance of the deadline to file the Notice of Objection.

b) The CRA is always looking at improving its service to the public. For example, procedures are in place to ensure that information is recorded in a taxpayer's file where the reason for a non-adjustment or a reassessment is unclear, or if a reversal of a matching action is processed. This information is reviewed in subsequent years in order to minimize contact with the taxpayer or the representative, and to avoid processing incorrect reassessments. This would generally be the case when a T5 information slip is issued under a particular social insurance number but amounts are allocated to more than one taxpayer. Concerning improvements to the EFILE system, we are continually striving to improve our electronic services and develop initiatives that would enhance the

efficiency of our processes. The CRA encourages the use of electronic filing by taxpayers and their representatives as tax returns can be processed quickly and refunds issued faster than tax returns which are paper filed.

19. Information Slips

At the 2009 Roundtable (Question #4), the CRA indicated that the enforcement of filing requirements for T4A slips was under study by the CRA, that any changes would be the subject of external consultation, and that "the CRA is committed to keeping the interested groups and associations appraised of any new and relevant information on the subject". Recently, we have been advised that payroll auditors have been instructed that T4A slips should be prepared for fees for services "integral to the business" (for example, instructors for an educational business or drivers for a transport business , but not the janitors or accountants for such businesses). We have also been advised that this is intended to be educational, and that penalties are not currently being assessed.

a) Please confirm the current policy for payroll auditors discovering fees for services which have not been reported on T4A slips for the current, and previous, years.

b) The newly redesigned T4A adds Box 048 to record "fees for service" and a generic area for "Other Information". Our members have many questions in this regard:

   (i) What is the CRA expectation of the types of services for which they expect (and do not expect) T4A Box 048 to be used? That is, assuming the policy set out above is accurate, what activities are, and are not, considered "integral to the business"? An extensive list of examples appeared in the 2009 Roundtable listing. We have not prepared a new listing here, but would invite the CRA to consider that listing at this time.

   (ii) Specifically, we understand CRA is requiring farmers to issue T4A slips to individuals or organizations providing custom work and that construction businesses should issue both T4As and T5018s to subcontractors (contrary to the CRA website at http://www.cra-arc.gc.ca/tx/bsnss/tpcs/pyrll/rtrns/t4a/xcptns-eng.html). Is this the current CRA expectation?

   (iii) CRA's website indicates "fees or other amounts for services" should be reported, but describes these as "other amounts related to employment" (http://www.cra-arc.gc.ca/tx/bsnss/tpcs/pyrll/hwpyrllwrks/stps/pyr-eng.html). As such payments are typically made to non-employees, we request the CRA please explain the employment reference.

   (iv) What type of information does the CRA desire and/or expect to be entered in the new T4A "Other Information".

   (v) Please direct us to any written guidance provided by CRA in this regard. If there is no such guidance, please advise of the CRA's timeframe for providing same.

c) Please advise as to the expected duration of the "penalty-free" period, and the manner in which any future change in this policy will be communicated to taxpayers and their advisors.

d) Are penalties currently being levied for late and/or unfiled Form T5018s?

e) The regulations impose a broad requirement exists to file T5 returns for interest. Read strictly, Regulation 201 appears to require T5 slips for interest paid on home mortgages, brokers' margin accounts, purchase of a bond with accrued interest, finance contracts or utility and credit card bills. We would ask that the CRA comment on the criteria under which they will, and will not, waive the T5 filing requirement. Specifically, we would ask the CRA advise of their expectations in respect of:

(i) interest between related parties, including intercompany debt, interest-bearing loans to family members and interest paid by Trusts on funds borrowed from related or unrelated parties.

(ii) intercompany dividends which are typically deductible by the recipient.

(iii) CRA's policy regarding penalties where T5s have not been filed. Does the CRA's policy in this regard vary depending on whether the income is properly reported by the recipient?

CRA Response:

The T4A slip is used to report different types of payments made to various recipients when the payments exceed $500 per year, or when income tax has been withheld. The payments to be included on the T4A slip are not limited to payments made to employees. Employers, trustees, estate executors, administrators and corporate directors use the T4A to report payments such as self-employed commissions, annuities, patronage allocations and payments for fees or other amounts for services. This information is available in our guide, RC4157, *Deducting Income Tax on Pension and Other Income, and Filing the T4A Slip and Summary,* which is posted on the CRA website.

The CRA redesigned the T4A slip to simplify reporting requirements, reduce the burden on the filer, and improve data quality. The 2010 version of the T4A slip allows for the reporting of income for 2009 and subsequent tax years, as well as prior years. This means that payers will not have to use the previous form to report income from prior years. These changes do not impose any new reporting requirements.

One change that has garnered attention is the new fixed Box 048 – Fees for Services. Previously, these payments and other amounts for fees for services were reported in Box 28 – Other income, along with many other types of payments. This change generated questions from some taxpayers, although the requirement to report payments for fees for services is long-standing. As before, any person making a payment for fees for services should report these amounts on the T4A slip, and individuals receiving payments for fees for services must include these amounts in their income when they file the income tax returns. Amounts not assigned a box number will continue to be reported in Box 028 – Other Information on the new T4A slip.

The requirement to report amounts for fees for services primarily affects businesses. It is not intended to include individuals who make payments for personal services such as dental work or hair salon services. However, given the questions being raised, and to ensure a common understanding of what payments should be reported in Box 048, the CRA will undertake contained consultations with the business community and key stakeholders. In the meantime, all fees for services that were previously reported in Box 28 should be reported in Box 048. Where CRA officers discover fees for services that have not been reported, they will explain to the payer their reporting obligations and assist them in becoming compliant. Until such time as consultations are complete, taxpayers will not be penalized for failing to complete Box 048.

For more information on what types of income to report on the T4A, as well as instructions on how to complete the new slip, please see CRA's guide RC4157, *Deducting Income Tax on Pension and Other Income, and Filing the T4A Slip and Summary*.

CRA Response to (d)

Failure to file the T5018 *Statement of Contract Payment* and *Summary of Contract Payment* penalties are being levied.

While the construction industry adjusts to the T5018 reporting requirements, late filing penalties have not been levied. However, penalties will be levied on late T5018s beginning with T5018s assessed in 2012.

CRA Response to (e)

(e) The regulations impose a broad requirement exists to file T5 returns for interest. Read strictly, Regulation 201 appears to require T5 slips for interest paid on home mortgages, brokers' margin accounts, purchase of a bond with accrued interest, finance contracts or utility and credit card bills. We would ask that the CRA comment on the criteria under which they will, and will not, waive the T5 filing requirement. Specifically, we would ask the CRA advise of their expectations in respect of:

- *interest between related parties, including intercompany debt, interest-bearing loans to family members and interest paid by Trusts on funds borrowed from related or unrelated parties.*
- *intercompany dividends which are typically deductible by the recipient.*

In response to the preceding two bullets, chapter 4 of our Publication T4015 – *T5 Guide – Return on Investment Income* provides clarification on when to and when not to file T5 Information Returns (slips and summary).

We have reproduced the relevant section for ease of reference.

- ***When do you have to prepare a T5 slip?***

  If you make certain payments to a resident of Canada, or if you receive certain payments as a nominee or agent for a person resident in Canada, you have to prepare a T5 slip.

  These payments include:

  - *eligible dividends and dividends other than eligible dividends (including most deemed dividends);*
  - *interest from:*
    - *a fully registered bond or debenture;*
    - *money loaned to or on deposit with, or property of any kind placed with, a corporation, association, organization, or institution;*
    - *an account with an investment dealer or broker;*
    - *an insurance policy or annuity contract (when the interest is paid by an insurer); or*
    - *an amount owing as compensation for expropriated property;*
  - *certain amounts distributed from an eligible funeral arrangement (see Box 14 - Other income from Canadian sources);*
  - *amounts that have to be included in a policyholder's income under section 12.2;*
  - *royalties from the use of a work, an invention, or a right of production from natural resources; or*
  - *blended payments of income and capital made by a corporation, association, organization, or institution. For more information, see Blended payments.*

    *For investment contracts acquired **before** 1990, you have to report accrued interest every three years, unless the recipient has elected to report annually. This calculation is based on the calendar year. For more information, see Contracts acquired after November 12, 1981, and before 1990.*

    *For investment contracts acquired **after** 1989, you have to report accrued interest every year. Base this calculation on the date the investment contract was issued. We will consider an investment contract acquired before 1990 to be a new contract acquired after 1989 if certain material changes were made after 1989. For details, see Interpretation Bulletin IT-448, Dispositions - Changes in Terms of Securities, and its Special Release.*

We explain special accrual rules for indexed debt obligations in Indexed debt obligations issued after October 16, 1991.

- ***When do you not have to prepare a T5 slip?***

  *You **do not** have to prepare a T5 slip to report:*

  - *amounts paid to one recipient when the **total** amount for the year is less than $50;*
  - *the interest part of a blended payment made by an individual;*
  - *interest one individual pays to another, such as interest paid on a private mortgage (this does not include investment dealers or brokers making payments for client accounts);*
  - *interest paid on loans from banks, financial houses, or other institutions whose usual business includes lending money;*
  - *capital dividends, as described in Interpretation Bulletin IT-66, Capital Dividends;*
  - *amounts paid or credited to non-residents of Canada (see Chapter 7 - Payments to non-residents of Canada);*
  - *interest on an investment contract accrued or payable during the year to a corporation, partnership, unit trust, or any trust of which a corporation or partnership is a beneficiary;*
  - *an amount distributed from an eligible funeral arrangement, if the amount is a return of contributions only; or*
  - *interest paid to farmers under the AgriStability and AgriInvest programs, Fund 2 (these amounts are reported on an AGR-1 slip).*

The Guide also provide references to various Information Circulars and Interpretation Bulletins that provide further clarification with respect to interest Income, dividends and the applicable reporting requirements.

For any specific situations where there is a requirement for further clarification, a request for a technical interpretation or advance income tax ruling can be submitted to the Income Tax Ruling Directorate. The directorate's mandate is to provide CRA's interpretation of the *Income Tax Act*, the *Income Tax Regulations* and related statutes including Income Tax Conventions and establish CRA's policy with respect thereto.

Attached is the link to the CRA webpage where more information on requesting Income Tax Rulings and Interpretations can be found.

http://www.cra-arc.gc.ca/tx/txprfssnls/srvcs/menu-eng.html

CRA Response to part of (e)

CRA's policy regarding penalties where T5's have not been filed. Does the CRA's policy in this regard vary depending on whether the income is properly reported by the recipient?

There are a number of penalties that can be applicable with respect to the T5 information returns. We refer you to chapter 1 of our publication T4015, *T5 Guide, Return on Investment Income,* where information regarding applicable penalties is provided.

20. Bequests of Life and Remainder Interests

CRA document 2002-0154725 discusses division of the cost of a deceased person's asset between a beneficiary receiving a life interest and one receiving a remainder interest, with the CRA noting the two interests must have a combined value equal to the value of the property. Regarding such situations:

a) Are life interests valued in view of the Testator's life or the Beneficiary's life? A Life Interest to the Testator would seem to have no value immediately before death, where the value to the beneficiary would depend on that beneficiary's life expectancy.

b) Does the CRA consider the life interest and remainder interest to be separate properties, or do they consider the property as a whole to be held by one of the two beneficiaries in a trust relationship, reflecting the beneficial interests of each of the life and remainder beneficiaries? The CRA document implies the two interests are each owned separately.

c) The CRA document indicated CRA's view that the life interest is deemed disposed of immediately prior to the death of the life tenant, with no provision for transfer of its tax cost to the remainder interest holder. Does the CRA agree that this would:

- result in no tax relief to the life tenant where the property was used only for personal use?
- result in a capital and/or terminal loss equal to the cost of the life interest where the property was used to earn income?

d) The CRA document also indicated the remainder interest would have a cost equal to the value of the property as a whole, less the value of the life interest, and that the cost of the life interest to the life tenant would have no impact on the remainder beneficiary's tax cost. Does the CRA agree that the remainder beneficiary would compute recapture and capital gains on a depreciable property originally inherited as a remainder interest on the basis that the value of the remainder interest at the date of the Testator's death forms the original cost of the property, unadjusted for the value of the life interest? Does the CRA's interpretation vary depending on whether the property is disposed of during the life of the life tenant?

e) ITA 70(9) and (9.01) permit land in Canada or depreciable property in Canada used in a farming business to be transferred to children of the owner at a value between its ACB and its fair market value. Does the CRA consider a life interest and/or a remainder interest in farm property to qualify, under ITA 70(9), as "Land in Canada" eligible for rollover treatment where the other conditions of ITA 70(9) and (9.01) are met? Would the CRA's answer differ if either the life or remainder beneficiary were not a child of the Testator?

CRA Response:

CRA Response (a)

When a life interest or a remainder interest in capital property is acquired by an individual as a consequence of a person's death, the adjusted cost base of that individual's interest in a property is determined under subsection 70(5) or (6) of the *Income Tax Act* (as is applicable in the circumstances) at the time of the person's death. As indicated in paragraph 5 of IT-226R, *Gift to a Charity of a Residual Interest in Real Property or an Equitable Interest in a Trust*, the fair market value (the "FMV") of a life interest at a particular time will vary according to the type of gift, other interests in the property or trust and the documentation providing for the transfer. Although the comments in IT-226R are made in the context of valuing a gift made during the lifetime of the individual holding the property, the valuation principles would apply equally upon the creation of such interests as a result of the death of an individual.

It is the CRA view that the FMV of a remainder interest in a real property at a particular time is equal to the FMV of that real property minus the FMV of the life interest therein at the particular time. The calculation of the FMV of the life interest would usually be based on the following elements: FMV of the real property, a reasonable rate of interest, life expectancy of the beneficiary of the life interest at the date of transaction (which, in this case, would be at the time of the person's death), and any other factors relevant to the specific case.

CRA Response (b)

The determination of the legal form of any particular transaction is a question of fact and, as such, the CRA is unable to provide any commentary in this regard. Whether an individual's interest in real property represents a life estate, an interest in a trust or something else in law will depend solely on the facts of each particular case.

For purposes of our comments in document 2002-0154725, the facts specifically stated that the beneficiaries in that case were party to a formal life estate agreement under common law where, pursuant to an individual's will, a life interest in real property was conveyed to a spouse while the remainder interest was conveyed to a child. As such, it was our view that each of the life interest and remainder interest represented a separate property in that case for purposes of the *Income Tax Act*.

CRA Response (c)

Under subsection 70(5) of the Act, a life tenant is deemed, immediately before death, to have disposed of his or her life interest in the property for proceeds equal to the FMV of the interest at that time. Where the property that is subject to the life interest is personal use property, subparagraph 40(2)(g)(iii) of the Act will apply to deny any capital loss that may arise as a result of this deemed disposition. However, where the property is not personal use property as that term is defined in section 54 of the Act, subparagraph 40(2)(g)(iii) would have no application; however, whether any property is personal use property for purposes of the Act is a question of fact.

The determination of the FMV of the life interest at the time of death and any resulting capital loss, if otherwise not denied, is a question of fact. It is the CRA view, however, that the imminence of death is not taken into account in determining the deemed proceeds of disposition of a life interest for the reasons set out by the Federal Court of Appeal in *The Queen v Mastronardi* (77 DTC 5217), although one would reasonably expect that the value of a life interest to decline over time unless the annual level of income from the property increases to sufficiently compensate for the life expectancy factor.

CRA Response (d)

As stated in document 2002-0154725, there is no provision in the Act which allows an amount to be added to the adjusted cost base of the remainder interest in the property as a result of the expiry of the life interest upon the death of the life tenant. Any capital gain realized on the ultimate disposition of the property would be equal to the proceeds of disposition of the property less the adjusted cost base of the remainder interest to the remainder interest holder (as determined at the date of the testator's death) and any selling costs.

Whether or not this position would apply in respect of property that is depreciable property and where the disposition of the property occurs either during the life of the life tenant or after their death, would be an issue the Income Tax Ruling Directorate would be pleased to consider in the context of technical interpretation.

CRA Response (e)

In general, subsection 70(9) allows land in Canada or depreciable property in Canada of a prescribed class, that is held by a taxpayer, to be transferred on a tax-deferred basis on death to a child of the taxpayer, pursuant to subsection 70(9.01) of the Act, where the following requirements are met:

a. The property was, before the taxpayer's death, used principally in a farming business carried on in Canada in which the taxpayer, the spouse or common-law partner of the taxpayer, or a child or parent of the taxpayer, was actively engaged on a regular and continuous basis;
b. The child was resident in Canada immediately before the day the taxpayer died; and
c. As a consequence of the taxpayer's death, the property is transferred to and becomes vested indefeasibly in the child within 36 months after the taxpayer's death.

Interpretation Bulletin, IT-349R3, *Intergenerational Transfers of Farm Property on Death*, discusses the general application of this rollover provision. In general terms, where the above-mentioned conditions have been satisfied, the legal representative of the deceased taxpayer may elect to transfer the particular property at any amount between its cost amount and its fair market value immediately before the time of the death of the taxpayer. The elected amount is deemed to be the cost of the property to the child. Note that for purposes of these rules, a child of the taxpayer has the extended meaning as provided for in the definition of "child" in subsection 70(10) of the Act.

In paragraph 7 of Interpretation Bulletin IT-268R4, *Inter Vivos Transfer of Farm Property to Child*, we state that in certain circumstances, the CRA will regard a remainder interest in land as "land" for the purposes of the inter vivos rollover in subsection 73(3) of the Act. However, whether or not this position as outlined in IT-268R4 would extend to a particular interest in real property for purposes of subsections 70(9) and (9.01) has not been fully considered by the CRA given the differences between the provisions. As such, we suggest guidance be sought from the Income Tax Ruling Directorate in this regard.

Additional Question

The CRA document 2002-0154725 indicated CRA's view that the life interest is deemed disposed of immediately prior to the death of the life tenant, with no provision for a transfer of its cost to the remainder interest holder. At the death of the life tenant, one would assume that the FMV of the life interest would be nil—would CRA provide reasons why the value would be anything other than nil?

CRA Response:

The determination of the FMV of the life interest at the time of death of the life tenant is a question of fact. As a matter of practice, the Income Tax Ruling Directorate does not review nor provide advice with respect to the determination of FMV of a particular property at any particular point in time. Specific questions concerning the valuation of a particular life estate for tax purposes should be directed to the valuation section of the appropriate Tax Services Offices.

As previously noted in our original response to the Roundtable, under subsection 70(5) of the Income Tax Act (the "Act"), a life tenant is deemed, immediately before death, to have disposed of his or her life interest in the property for proceeds equal to the FMV of the interest at that time. For the reasons set out by the Federal Court of Appeal in *The Queen v Mastronardi* (77 DTC 5217), the imminence of death is not taken into account in determining the deemed proceeds of disposition of a life interest. Thus, the fact that a life interest ceases to exist upon the death of the holder is irrelevant for purposes of the application of subsection 70(5) of the Act.

That said, however, one would reasonably expect that the value of a life interest to decline over time but based on the above comments, we would not generally expect the facts to support a life estate valuation of nil at a time that is immediately before the death of the life tenant.

21. Authorization Forms

a) Recently, CRA began allowing the electronic filing of T1013 authorization forms. Are any similar initiatives in progress or under consideration? Specifically, is a process permitting efile of RC59 (corporate authorization) or RC1 (business number application) forms under consideration?

b) Do the original copies of Forms T183 and T1013 have to be kept on file or are fax/electronic copies acceptable? Many practitioners maintain paperless documentation systems, and would prefer to avoid retaining hardcopies of these forms if practical.

c) There seems to be some confusion on how businesses authorize internal employees to access information with CRA. At one time, the Winnipeg Tax Centre requested the employer forward a letter with a list of employee names and the companies that they were authorized on. Recently, however, we understand CRA has requested individual RC59 forms for each employee in respect of each company in a corporate group. Please clarify the correct process for obtaining CRA authorization for a number of employees on a number of corporate entities in a corporate group.

CRA Response:

CRA Response to (a)

There are important differences in the relationships between individuals, business and their representatives, which make the development of an efile solution for business consent forms less than ideal.

For individuals, by far the most common relationship is between a taxpayer and a tax preparer, who files an individual income tax return on behalf of the taxpayer. For each income tax return filed, there is a requirement for the taxpayer to sign and for the tax preparer to retain a copy of Form *T183, Information Return for Electronic Filing of an Individual's Income Tax and Benefit Return* for six years. The implementation of the electronic filing of Form *T1013, Authorizing or Cancelling a Representative* introduced a similar process, which requires the taxpayer to sign the T1013 and for the tax preparer to retain the form and submit to the CRA if requested to do so.

For businesses, the relationships between business owners and their representatives are more varied and more commonly will be with an accountant, lawyer, employee or family member than with a tax preparer. Businesses also have a variety of ownership types, the most common, sole proprietorships, partnerships and corporations. The CRA is committed to providing electronic services; however, the complexity has slowed our progress in automating RC59's for business.

The CRA is currently evaluating options for electronic delivery of Business Consent forms, which would be applicable to all businesses, regardless of ownership type or the relationship between the representative and the business owner.

Functionality is currently available to allow a business to empower an authorized representative to interact with the CRA through the *My Business Account* service.

The CRA also provides an electronic business registration application called the Business Registration Online (BRO) application. This integrated on-line service allows you to register for a Business Number, four CRA program accounts types (Corporation income tax, GST/HST, Payroll, and Import/Export) as well as Ontario, Nova Scotia, and British Columbia provincial program accounts. The BRO application can be found on the CRA Web site at the following address: http://www.cra-arc.gc.ca/tx/bsnss/tpcs/bn-ne/bro-ide/menu-eng.html

As always, we welcome any suggestions for improvements to our processes and electronic services.

CRA Response to (b)

As required by section 150.1(4) of the Income Tax Act, both the Electronic Filer and his clients have to keep a copy of the completed Form T183. The Electronic Filer should instruct their clients not to submit the form unless the CRA ask for it. The Electronic Filer should keep his copy in a secure location.

Form T183 must be kept for at least six years following the date that the return was filed. Written permission is required for the Electronic Filer or his client to destroy Form T183 before the six-year period is up. For more information, see Information Circular Number 78-10R5, *Books and Records Retention/Disposal*.

Faxed copies of the T183 form are acceptable however the Electronic Filer still has to retain this faxed form for 6 years.

For more information about the T183, access the link below:

http://www.efile.cra.gc.ca/l-frmt183-eng.html :

T1013, Authorizing or Cancelling a Representative

Forms electronically submitted

For electronically submitted T1013s, the taxpayer's representative is required to keep the original Form T1013 for six years following the date that the form was electronically sent. The disposal is to be done in

respect of the Books and Records Retention/Disposal instructions found in Information Circular Number 78-10R5.

Paper forms sent to the CRA

It is acceptable to send the paper Form T1013, either by fax, in person, or by mail. While there is no formal requirement for the representative to keep the T1013 that was submitted on paper, it is highly recommended to keep copies in your files for a period of one year.

CRA Response to (c)

The *Business Consent Form, RC59,* is a legal agreement, signed by an authorized person of the business (i.e. an owner, a partner of partnership, or a director of a corporation) allowing the CRA to deal with a representative for business account related information on the business' behalf. Each business number (BN) being a unique legal entity; it has always been the CRA's policy to require one RC59 for each authorization.

Over the past few years, the CRA has delivered enhancements to its systems and the authorization process to allow a business to authorize a group of individuals/employees to deal with the CRA on its behalf. By authorizing a representative's Group or BN that has been registered in the *Represent a client* (RAC) service, it is now possible for a business to complete only one RC59 (authorizing the GroupID or the BN) and allow the group or BN administrator to manage the representatives for their client/employer within the *Represent a client* service.

22. Appeals Explanations – Ombudsman's Recommendations

The Taxpayers' Ombudsman's report of November 9, 2010 recommended the CRA provide their reasons when resolving a Notice of Objection, and the Minister of National Revenue accepted this recommendation on the same date. However, our members find that such reasons are not being provided, even when formally requested.

a) Can the CRA advise of the expected timeframe for implementing the recommendations made in the Dube ombudsman report, and accepted by the Minister of National Revenue?

b) In the interim, what steps should taxpayers or their advisors take to obtain detailed reasons in a timely fashion?

CRA Response:

The Appeals Branch has already implemented the Ombudsman's changes in the CPP/EI appeals program. As of January 4, 2011, the CPP/EI program sends, to each of the involved parties, the summary section of the Report on an Appeal (CPT110).

For the tax objections programs, the Branch reviewed current procedures to determine the most effective way to provide the necessary information. We expect to start issuing decisions in a new document format on September 1, 2011.

As always, we expect Appeals Officers to discuss their findings with objectors before closing their cases, and to explain their decisions in the final notification. If there is an occasion where you do not believe this was done, you should first request the appeals officer to provide the details. If questions still remain, you are invited to contact team leader for clarification.

23. E-filing of Various Documents

We have had electronic filing for personal tax returns, corporate tax returns, GST returns and many information returns for many years, with all but personal tax returns recently being made mandatory for many taxpayers. Please advise whether there any plans to enable electronic filing of other forms, such as the following:

- GST 34 and GST 60 (Acquisition of Real Property)
- T106 (Non-arm's Length Transactions with Non-residents)
- T1134 returns (Foreign Affiliate Reporting), which are due 15 months after the taxation year end of a corporation. Since these are not generally filed at the same time as the corporate T2 return, corporate e-filing is not done and paper-filed returns are usually prepared.
- T1135 returns (Foreign Property Disclosure) – we find this a very common form in practice
- T1141 and T1142 (transactions with non-resident trusts)
- T3 Trust Returns
- T2054 (capital dividend elections)
- T2057 or T2058 (ITA S 85(1) and (2))
- T2059 (ITA S 97(2))
- Elections with no prescribed form
- Any other forms under consideration?

CRA Response:

- GST 34 and GST 60 (Acquisition of Real Property)

  Although the question notes the GST 34, perhaps the requestor meant to state the GST 59 as the GST 59, GST/HST Return for Imported Taxable Supplies and Qualifying Consideration and GST 60, GST/HST Return for Acquisition of Real Property are both special GST/HST Returns. GST 34 can already be filed electronically today.

  Unlike the GST 34 return, the CRA processes a very limited number of the GST 59 and GST 60s. They are also primarily used by businesses that are not registered for GST/HST and do not already have a business number. Therefore, the vast majority cannot be filed using our existing electronic filing services, such as GST/HST NETFILE. These forms also serve as payment vouchers, meaning that even if the return is filed electronically, the corresponding payment would still need to be made via a separate mechanism (either a paper remittance voucher or electronically). Presently, no financial institution offers an electronic payment solution for these forms.

- T106 (Non-arm's Length Transactions with Non-residents)
- T1134 returns (Foreign Affiliate Reporting), which are due 15 months after the taxation year end of a corporation. Since these are not generally filed at the same time as the corporate T2 return, corporate e-filing is not done and paper-filed returns are usually prepared.
- T1135 returns (Foreign Property Disclosure) – we find this a very common form in practice
- 1141 and T1142 (transactions with non-resident trusts)

  Re T106, T1134, T1135, T1141, and T1142: There are no immediate plans to offer an electronic filing option for these returns. These returns are captured on a small stand-alone system (small in

comparison to the mainframe system) and therefore cannot be accepted in electronic format. At this time, they are not filed in large enough numbers to warrant developing an electronic processing system.

- T3 Trust Returns

  Electronic filing options are presently being explored for T3 returns. CRA is still reviewing the various options of electronic filing to determine which option will best meet the needs of all T3 clients. The option chosen to be best suited for T3 returns will determine when the application will be available.

- T2054 (capital dividend elections)

  Although there are currently no plans for e-filing the T2054 election, when possible we plan to make verified Capital Dividend Account balances (or at least some of their components) available on My Business Account. This is consistent with our approach to expanding our e-service offerings.

- T2034, T2057 or T2058 (ITA S 85(1) and (2))

  There are no immediate plans for the e-filing of the T2034, T057 or T2058, because only small numbers of these "special election" returns are filed as compared to other business returns.

- T2059 (ITA S 97(2))

  For the same reasons as stated for T2034, T2057, and T2958, there are no plans for the e-filing of the T2059.

- Elections with no prescribed form

  We are working on enhancing electronic services by building the functionality to enable GST/HST Elections to be electronically filed via My Business Account. We are looking at having this be available through My Business Account sometime in 2012.

  Although there are no immediate plans to offer e-filing for T2 related elections, it is something we are considering for the future consistent with our approach to expanding e-service offerings.

- Any other forms under consideration?

  T5013 Statement of Partnership Income (slips & summary)
  This is in the early analysis phase for future consideration.

24. Pensionable Earnings

Employers with long-term disability (or income continuance) plans wish to understand the response by the CRA, if any, in light of the decision in Toronto Transit Commission v. M.N.R., 2010 CarswellNat 160 (FCA), particularly as any action may have benefit implications to CPP recipients and to a lesser extent, premium implications to employers and employees. The FCA decided that disability payments did not constitute remuneration for pensionable employment. Our specific questions are therefore as follows:

- In situations where employers have historically treated disability (or income continuance) payments as pensionable income, are benefits that have accrued or are being paid subject to adjustment? Except for the matter described in CRA Views document 2010-0388721E5 and related referral to the CPP/EI Rulings Directorate, is the Canada Revenue Agency responding to ruling requests pursuant to s.26.1 of the *Canada Pension Plan* as a direct result of the *Toronto Transit Commission* case?

- Will the Minister of National Revenue refund CPP premiums to employees and/or employers (premiums remitted in error in respect of long-term disability or income continuance benefit payments) pursuant to requests under s.38(3) and (3.1) of the Canada Pension Plan and within the 4-year period specified therein?

- Does the CRA concur that such above-noted refund requests will cause the deeming provision of s.26.1 of the *Canada Pension Plan* to be inapplicable (assuming a ruling that disability or income continuance plan benefits are not pensionable employment), thus triggering a reconsideration of pensionable employment to CPP benefit recipients and potential claw-backs?

- Is there any comfort that the CRA can give to CPP Benefit recipients that their pensionable employment will not be reassessed for long-term disability (or income continuance) payments treated, in light of *Toronto Transit Commission*, in error by employers as pensionable employment, assuming no request for refund under s.38(3) and (3.1) of the *Canada Pension Plan*?

CRA Response:

- The CRA cannot provide an answer with respect to the question on CPP benefits as this is a matter that falls under the authority of HRSDC. In regards to the second question, in accordance with section 26.1 of the *Canada Pension Plan*, the CRA will issue a ruling when a request is made before June 30th of the year after the year in respect of which the question relates

- Yes. The answer to this question is explained on our CRA website under the question "As an employer, is my business entitled to a refund of Canada Pension Plan (CPP) contributions?" using the following link:

  http://www.cra-arc.gc.ca/tx/bsnss/tpcs/pyrll/clcltng/spcl/wglssqstns-eng.html#q7

- In situations where a ruling is made further to a refund request, subsection 26.1(4) of the *Canada Pension Plan* does not apply. The CRA cannot provide an answer with respect to the question on potential claw-backs as this is a matter that falls under the authority of HRSDC.

- The CRA cannot provide an answer with respect to the question on CPP benefit recipients as this is a matter that falls under the authority of HRSDC.

25. SR & ED Issues

CRA has told some taxpayers that they must use current of Investment Tax Credits (ITCs) before applying ITC's carried forward or back from other years. This seems inconsistent with the Tax Court of Canada decision in Ainsworth Lumber Co. Ltd.,2001 DTC 496, which concluded that there are no ordering rules in the definition of ITC's (ITA 127(5)) that would require current ITCs be applied to eliminate tax otherwise payable before applying ITCs of preceding or subsequent years.

a) Assuming our understanding of the CRA's policy as set out above is correct, what is CRA's legislative basis for concluding there is a mandatory ordering of such claims?

b) Assuming CRA is correct at law, would the CRA consider administrative exceptions where the results are inappropriate (for example, where ITC's of prior years will expire, frustrating Parliament's intent to offer tax relief for certain expenditures)?

We have found Form T1174 (*Agreement Between Associated Corporations to Allocate Salary or Wages of Specified Employees*) to be quite useful, and have some questions regarding that specific form

c) If the only thing being transferred is the wage and related proxy amount for a specified employee, is Form T1146 required in addition to Form T1174?

d) Should Form T1174 be used when the individual would be a specified employee in the main R&D Company, but the main company is not associated with the employee's company?

e) Currently, the major tax software providers are not including the T1174 with their corporate tax packages. Has CRA considered publicizing this useful tax form to enhance its utilization and/or requesting the tax software providers include this form?

CRA Response:

a) In a given tax year, a taxpayer may have investment tax credits (ITCs) available to them that were earned in the year, carried forward from a prior year, or carried back from a subsequent year. While the Tax Court of Canada decision in *Ainsworth Lumber Co. Ltd.* concluded that there are no ordering rules on which ITCs should be claimed in a year, it did recognize that subsection 127(5) of the *Income Tax Act (*ITA) sets down a formula for determining the maximum ITC that could be claimed for a year.

The CRA's interpretation of what ITC can be claimed in the year is based on the formula described in subsection 127(5), which is consistent with the *Ainsworth Lumber Co. Ltd.* decision and is reflected in the ITC calculations of Schedule T2SCH31 and Form T2038 (IND). Please refer to technical interpretation 2005-014368I7, *Carryback of ITC and Refundable ITCs*, published by the CRA Income Tax Rulings Directorate, which provides the same interpretation and an example. In general, it is more advantageous for a current year or carried forward credit to be claimed first before a carried back credit is applied.

b) The CRA does not apply any ordering rules other than the maximum ITC that could be claimed in a year as outlined in subsection 127(5) of the ITA. It is possible to apply a prior year ITC first before applying an ITC earned in the year. It is up to the taxpayer to structure their affairs to ensure that they maximize the use of their ITC.

c) Form T1146 is used to transfer qualified SR&ED expenditures incurred (by the transferor) in a particular tax year, for SR&ED contract work performed for, or on behalf of, another taxpayer (the transferee) at a time when the two parties were not dealing at arm's length.

Form T1174 is used to determine the maximum salary or wages of a specified employee when there are associated corporations. The maximum amount of salary or wages of a specified employee that can be claimed as an SR&ED expenditure is limited to five times the year's maximum pensionable earnings (YMPE). Pursuant to subsection 37(9.2) of the ITA, where an individual is a specified employee of a corporation and also a specified employee of another corporation within an associated group, each corporation for which the employee is a specified employee **must** file Form T1174, as outlined in subsection 37(9.3), to specify the allocation of the five times YMPE amount among the associated group. This ensures that the total SR&ED salary or wages claimed for the specified employee by all the associated corporations will not be greater than the five times YMPE amount. Form T1174 does not allow for the transfer of SR&ED expenditures or qualified expenditures.

Both forms T1146 and T1174 would be required in situations where associated corporations are required to allocate an amount in respect of specified employee salary or wages **and** they also elect to transfer qualified expenditures in respect of non-arm's length SR&ED contracts.

d) No, Form T1174 is only used when two corporations are associated.

e) Form T1174 is currently not captured electronically. If a taxpayer must file a Form T1174, and is filing their return electronically, then Form T1174 should be sent separately to the same tax centre responsible for processing their return (see "Where to file your paper return" in Guide T4012, T2 Corporation – Income Tax Guide).

Form T1174 is available on the CRA Web site