CPA Canada / Provincial Roundtable Questions to Canada Revenue Agency

AGGRESSIVE TAX PLANNING PROJECTS

Question Type: Admin/Process

QUESTION: Can the CRA provide comments on the issues currently being focused on by their Aggressive Tax Planning section?

ANSWER: The government has made significant investments since 2015 to strengthen the Canada Revenue Agency's (CRA's) ability to crack down on complex tax schemes. A variety of audit program areas focus on Aggressive Tax Planning (ATP) and the issues currently being reviewed include surplus stripping by Canadian individuals and non-resident taxpayers, the application of subsection 55(2), the avoidance of the stop-loss rules (domestic and international rules), the manipulation/creation of tax attributes, loss-trading and loss creation. Moreover, the avoidance of provincial tax and transactions involving trusts, including the avoidance of the 21-year rule, are issues also under review by the CRA. The avoidance of the rules in section 160 relating to the collection of tax and those pertaining to the debt forgiveness rules continue to be a current issue under audit. Finally, on the international front, transactions that result in the base erosion and profit shifting by multinational enterprises continue to be a key focus by the CRA.

AUDIT COMMUNICATIONS

Question Type: Admin/Process

QUESTION: It seems like auditors are not consistent in their communications with taxpayers. As an example, one practitioner reports a client receiving a voice mail message advising he, and his corporation, were selected for audit (two messages at his home phone on two consecutive days). The taxpayer, on doing some online research, concluded this was a scam.

The practitioner called the callback number, which was answered "FirstName Speaking", with no reference to the CRA at all. The auditor appeared shocked that the practitioner would expect that the taxpayer would be advised of the audit in writing, rather than by an informal telephone call. While the auditor was quite reasonable in resolving the matter, it raises the following question:

What training and/or guidelines do CRA auditors receive regarding communications with taxpayers and their representatives, to ensure these is consistent and professional? Given the ever-increasing issues with scammers, it seems more important than ever for CRA to present a consistent “face”, especially when they initiate contact with taxpayers.

ANSWER: Auditors receive information from multiple sources that help to guide their communications with taxpayers. First and foremost is the Code of Integrity and Professional Conduct that clearly defines integrity, professionalism, respect, and co-operation as the cornerstones of all interactions between an employee and others. Refreshing their knowledge of and commitment to the Code of Integrity and Professional Conduct is mandatory on an annual basis for all auditors. In addition, all small and medium enterprises income tax auditors receive mandatory interview skills training that is aimed at improving soft skills and their interactions with taxpayers.

Basic audit skills courses walk through the initial contact scenario; a mandatory writing skills course reinforces, with examples, professionalism and respect in written communications. The Income Tax Audit Manual (ITAM) section 9.18.0 Contacting the Taxpayer outlines procedures for a variety of initial contact scenarios; the Transmittal and Transport of Protected and Classified Information and Assets Standards (also referenced in ITAM 4.7.3) speak to confidentiality and safeguarding of information and are reviewed during basic training courses; information on the Active Offer of Service is provided to all new auditors; and mandatory courses on understanding the Taxpayer Bill of Rights and the CRA’s commitment to small business, which again reinforces the concepts of confidentiality, professionalism, and respect.

This list of training, information, and policy strives for a consistency in process (professionalism, respect) as opposed to a consistency in script.

If ever a taxpayer or representative is wary whether a caller is calling from CRA, they should follow the directions on our web site How to tell you’ve been contacted by the CRA, and what to do if you are.

AUTHORIZATIONS

Question Type: Admin/Process

QUESTION: We received a number of comments/questions on the process around authorizing a representative. Can the CRA outline the ways (through RAC and MyBA) a representative can be authorized?

ANSWER:

MyBA

- When a business client is registered with My Business Account (MyBA), they can authorize a representative online, giving the representative immediate access to their CRA account without telephone validation.
- The client would log in to My Business Account to authorize a representative using the Authorize a representative service.

MyA

- When a client is registered with My Account (MyA), they can authorize a representative online, giving the representative immediate access to their CRA account without telephone validation.
- The client would log in to My Account to authorize a representative using the Authorize my representative service.

RaC

- When a representative is registered with Represent a Client (RaC), they can submit authorization requests online.
- After they complete the authorization request:
    - The client will need to sign the certification page before the representative can submit it to CRA.
    - The representative will need to submit the signed certification page using Submit documents in Represent a Client.
    - The CRA will review, validate, and process the electronic authorization request and certification page.
        - The CRA may telephone the business owner or individual to confirm the authorization request. If multiple attempts are required to contact the business owner or individual, it may take longer to process the request.
        - In order to avoid a situation where an authorization request is cancelled, representatives should be advising their clients that they may be contacted by the CRA regarding authorization requests, as per the banner available at Canada.ca.

Note: The CRA is exploring options to improve the telephone validation process.

Future enhancements

- In October, there will be a digital process for taxpayers to verify authorization requests that are submitted through RaC called Confirm my Representative. This will include the ability for representatives to see when their request has been cancelled or rejected. More information will be released closer to the implementation date.

Note: A level 3 (delegate) representative has the ability to add or remove representatives on a business account, similar to a business client using MyBA.

COLLECTIONS ACTIVITY

Question Type: Admin/Process

QUESTION: On March 6, 2019, the Taxpayers' Ombudsman released the report "Fair Warning" on CRA's debt collection processes. Can the CRA advise what changes have been made to address the issues raised in this report, including the nine recommendations provided?

ANSWER: In response to the Taxpayers' Ombudsperson report on Fair Warning, the CRA initiated a fulsome review of the Collections content on the Canada.ca website, as well as a review of its policies, procedures, manuals, and training products.

As a result of this review, the Collections content available to the public on the CRA internet site was rewritten to make it easier for taxpayers to understand the legal warning process. We also ensured that the content in our internal Collections manuals and formal training products, which are available to our collection officers, was rewritten and worded to ensure consistency with the information reflected on the CRA internet site.

The validity period for legal warning was changed from 365 days to 180 days. Additionally, collections officers must now actively offer a payment arrangement confirmation letter when a payment arrangement is made.

To see each recommendation contained within the Taxpayers' Ombudsperson Fair Warning Report and the corresponding actions undertaken by the CRA, please refer to Updates on CRA service improvements available on the CRA website.

UNDERGROUND ECONOMY

Question Type: Admin/Process

QUESTION: Could CRA provide an update on its plans with respect to the Underground Economy going forward?

ANSWER: Finding ways to address and reduce the underground economy (UE) remains a priority for the CRA. The CRA is developing its next UE Strategy scheduled for online publication in September 2022.

In the interim, the CRA has reaffirmed its commitment to combatting the UE through the development of a UE Business Plan for 2021-2022 (will be published later this fall). As such, the plan extends the focus set out in the Agency's previous UE strategies to manage UE risk. That is, the CRA will:

- engage citizenship to reduce the social acceptability of the UE
- leverage third-party data and information
- address evolving digital business models

At the same time, this interim plan recognizes emerging risks and a changing compliance landscape and so introduces elements of a contemporary approach that will be more fully realized in the next iteration of the UE strategy. This includes:

- a greater emphasis on the use of third-party data and technologies for compliance purposes
- an accelerating focus on:
    - the challenges and opportunities presented by the digitalization of commerce and financial data
    - the growing prevalence of online platforms that connect buyers and sellers for goods and services

QUESTIONS RELATED TO COVID SUPPORT PROGRAMS

Question Type: Admin/Process

QUESTION: (a) If an individual received COVID income support that would entitle them to extended interest free tax payment deadline of April 30, 2022, and all other conditions were met, would they still be eligible for the payment extension if they were required to pay back the COVID benefits that made them eligible? If not, would they be eligible to apply for interest relief through the normal taxpayer relief program?

The response provided by CRA comes from two different directorates:

ANSWER: The Government of Canada is providing targeted interest relief to Canadians who received COVID-related benefits in 2020. Once the 2020 income tax and benefit return is filed, individuals will not be required to pay interest on any outstanding income tax debt for the 2020 tax year until April 30, 2022. This measure is intended to give Canadians more time and flexibility to pay and will apply to the entire tax amount owing for 2020, not only to amounts owing due solely to COVID-related income support received.

To qualify for targeted interest relief, individuals must have had a total taxable income of $75,000 or less in 2020 and have received income support in 2020 through one or more of the following COVID-19 measures:

- the Canada Emergency Response Benefit (CERB);
- the Canada Emergency Student Benefit (CESB);
- the Canada Recovery Benefit (CRB);
- the Canada Recovery Caregiving Benefit (CRCB);
- the Canada Recovery Sickness Benefit (CRSB);
- Employment Insurance benefits; or
- similar provincial emergency benefits.

If an individual who received COVID benefits in 2020 is later determined ineligible for those amounts received and repays them in full, they will not automatically be disentitled to the targeted interest relief to April 30, 2022. If the repayment is made in 2021, it will be reflected on the 2021 T4A slip as a repayment. The individual can then choose to claim the repayment as a deduction on the 2021 income tax and benefit return or request a reassessment on the 2020 income tax and benefit return to take into consideration the repayment made. In this case, if the individual repays the entire amount of COVID benefits received in 2020, the reassessment of the 2020 income tax return would not change their eligibility for the interest relief. For the 2020 tax year.

Input from Appeals Branch

If an individual meets all eligibility criteria and has filed their 2020 income tax benefit return, they will not be required to pay interest on any outstanding income tax debt for the 2020 tax year until April 30, 2022. The CRA will automatically apply this interest relief measure for individuals who meet the eligibility criteria; taxpayers do not need to make a request. This interest relief measure only applies to income tax debts for the 2020 tax year, not on previous or other debts with the CRA.

If an individual does not meet all the eligibility criteria, there exists other options under the taxpayer relief provisions. More specifically, if an individual was not able to meet their tax obligations because of circumstances beyond their control, they can ask for taxpayer relief. The taxpayer relief provisions give CRA officials the discretion to cancel all or part of the interest and penalties charged to an account. Officials generally use this discretion when extraordinary circumstances, CRA actions, inability to pay or financial hardship, or other circumstances prevented individuals from meeting their tax obligations.

Individuals or their authorized representative can make a request to cancel penalties or interest online using the CRA My Account or Represent a Client services by selecting “Request relief of penalties and interest” under “Related services.” They can also fill out Form RC4288, Request for Taxpayer Relief – Cancel or Waive Penalties or Interest, and send it:

- online using My Account or Represent a Client by selecting the “Submit documents” service; or
- by mail to the designated office, as shown on the last page of the form, based on their place of residence.

For more information about how to submit documents online, go to canada.ca/cra-submit-documents-online.

For more information about relief from penalties and interest and the related forms and publications, go to canada.ca/penalty-interest-relief.

QUESTION: (b) Does the CRA appeals division have an accelerated timeframe to review objections related to CEWS and CERS claims? If not, would consideration be given to reviewing these objections on an accelerated basis as they tend to deal with businesses that have been impacted by COVID-19.

ANSWER: The Appeals Branch of the CRA has stood up a specialized centre of expertise to deal with Canada Emergency Wage Subsidy (CEWS) and Canada Emergency Rent Subsidy (CERS) objections and appeals on a priority basis. This workload is being carefully managed so that responses are provided within 30 days of receiving complete information to support amounts claimed wherever possible. The importance of emergency benefit claims is appreciated as businesses cope with the many pressures of Covid 19.

QUESTION: (c) Will CRA provide the ability for businesses to late file for CERS where CRA has amended or expanded their guidance, which results in the client being eligible where they previously did not believe they qualified?

ANSWER: The Agency implemented a system solution to allow businesses to submit applications for expired periods in Agency-approved situations. Although the system process is in place, the CRA will review each of these accounts to determine if the business meets the eligibility criteria to apply. The CRA uses procedures to determine if the business may qualify, and for which period. If the business meets the amended or expanded CERS eligibility criteria, the business /authorized representative will then be able to submit a CERS **initial** application or a **credit** reassessment for expired periods. Debit reassessments do not need this permission.

The CRA amended its CEWS FAQ to expand their guidance on late-filing; please refer to sections 26.01 and 26.02 of the CEWS FAQ. This guidance also applies to the CERS.

If the taxpayer contacts the CRA and indicates that they were unable to file an application on time, Business Enquiries agents will take down the pertinent information and forward the request for review for preliminary eligibility requirements. The businesses are then told to wait up to 15 days before trying to apply again. In most cases, the business will be permitted to apply past the deadline. A detailed note is placed on the Business Number account to explain why the CRA either accepted or denied their claim after the deadline.

DROP BOXES

Question Type: Admin/Process

QUESTION: Can the CRA provide an update on its plans with respect to drop boxes?

ANSWER: The decision to close drop boxes since the beginning of the COVID-19 pandemic was made, primarily, for the protection of employees as well as to implement certain changes made to the CRA operations in accordance with public health guidelines.

The Agency's mail operations employees are following advice and guidance provided by the World Health Organization (WHO), the Public Health Agency of Canada (PHAC) and Canada.ca https://www.canada.ca/en/public-health/services/diseases/coronavirus-disease-covid-19.html

Staff in the mailrooms at the Agency's tax services offices and tax centres are working in limited capacity while adhering to physical distancing protocol. As such, the CRA does not plan on reopening drop boxes at this time.

ELECTRONIC SIGNATURES

Question Type: Admin/Process

QUESTION: Will CRA be permanently allowing electronic signatures on T183 and other forms? Will e-signatures be acceptable for additional forms in 2021? Can CRA clarify whether e-signatures are currently accepted for non-resident T1s and departure returns when taxpayer ceases residency (currently have to be paper filed)

ANSWER: The Canada Revenue Agency (CRA) is very pleased to work closely with the tax preparation industry to make sure that taxpayers have access to high-quality products and services to meet their needs and expectations. As you know, Budget 2021 proposed to eliminate the requirement that signatures be in writing on certain prescribed forms, as follows:

- Forms prescribed under the *Income Tax Act*:
  - T183, *Information Return for Electronic Filing of an Individual's Income Tax and Benefit Return*;
  - T183CORP, *Information Return for Corporations Filing Electronically*;
  - T2200, *Declaration of Conditions of Employment;*
  - T2200S, *Declaration of Conditions of Employment for Working at Home Due to COVID-19*
  - *NEW for the filing season starting in February 2022*, the T183 Trust, *Information Return for the electronic filing of a Trust Return*
- Forms prescribed under the *Tax Rebate Discounting Act*:
  - RC71, *Statement of Discounting Transaction*; and
  - RC72, *Notice of the Actual Amount of the Refund of Tax*

There are currently administrative measures in place for the existing ITA forms listed above and we plan to continue to offer these administrative measures until legislation is proposed and Royal Assent is received. However, as the forms under the TRDA involve the assignment of a refund, we do not have any plans to offer administrative measures for electronic signature on the discounting forms until Royal Assent has been received.

The CRA continues to evaluate the legislative provisions, privacy, and security considerations associated with signatures on other forms.

FARM PARTNERSHIPS

Question Type: Admin/Process

QUESTION: CRA has waived the requirement for farm partnerships whose partners are all individuals required to file T1 returns for many years. However, the web page is typically updated to the current year very late in what would be the filing process (especially considering that partnerships are not all required to adopt a fiscal year matching the calendar year).

(a) Would the CRA consider modifying their annual waiver to indicate that they are waiving this requirement for an indefinite period, and will provide reasonable advance warning should they change this policy in the future?

(b) Would the CRA consider adding a statement that, with no T5013 partnership information return filed, the CRA can reassess the partners at any time in the future, in respect of their income and other tax attributes flowing from the partnership, without the usual time limits?

ANSWER PENDING: More information expected in 2022.

CPA Canada Note: We have suggested to the CRA that they extend their 2020 administrative policy where farm partnerships made up of individuals (those who file T1 income tax and benefit returns) did not have to file a T5013 return to the 2021 fiscal period.

FIRST NATIONS EMPLOYMENT INCOME

Question Type: Admin/Process

QUESTION: Can the CRA provide an update on its policy with regards to first nations employment income? The CRA website provides some guidelines, however much of the guidance reference the residency of the employer and/or employee. In the Morriseau case (2020 TCC 5), the Tax Court indicated that low weight should be placed on the residency of either the employee or the employer. Will CRA be reconsidering its guidelines in light of this case?

ANSWER: The employment income of an individual who is registered or entitled to be registered under the Indian Act is exempt from income tax under paragraph 81(1)(a) of the Income Tax Act and section 87 of the Indian Act, only if the income is situated on a reserve. The courts have established that whether income is situated on a reserve, and exempt from tax, requires identifying the various factors connecting the income to a reserve and weighing the significance of each factor, this is referred to as the “connecting factors test”.

In Morriseau v. The Queen (2020 TCC 5) (Morriseau), which you referenced, the Tax Court of Canada (TCC) considered whether the appellants’ employment income was situated on a reserve and exempt from tax, and based on the particular circumstances, gave little weight to the residence of the employer and employee.

Although Morriseau is an informal decision and therefore does not constitute a precedent, it is the CRA’s view that the TCC’s decision supports the use of the residence of the employer and employee as potentially relevant factors in certain circumstances when determining whether an employee’s employment income is situated on a reserve. Therefore, there is no need for the CRA to reconsider the Indian Act Exemption for Employment Income Guidelines as a result of this decision.

GUIDANCE ON COMPLEX ISSUES

Question Type: Admin/Process

QUESTION: It seems more and more common that complex technical issues (such as many related to the COVID-19 relief programs, and issues related to the Tax on Split Income) are provided only through the Rulings Division. As Technical Interpretations and similar documents are not official government publications, and therefore are neither translated to both official languages nor posted on the Government of Canada (i.e., CRA) website, this guidance is not available to all tax preparers, much less to the general public. We recognize that many CRA plans have had to be deferred due to the COVID-19 pandemic, however taxpayers must continue to prepare and file timely returns.

(a) Does the CRA have a strategy for disseminating these forms of guidance more broadly?

(b) What are the CRA's planned areas of focus for adding or enhancing technical guidance on the many changes implemented in the Income Tax Act over the past several years?

ANSWER: The CRA offers a wide range of information products to the public to support their voluntary compliance in preparing their tax returns, including guides, information circulars, pamphlets, income tax folios, as well as other guidance. The CRA's forms, guides and related information sources are regularly updated to incorporate new or pending changes for the tax year(s) at issue, and to ensure that they are technically accurate and sufficiently comprehensive as to address those situations that are most commonly encountered. Folio guidance is also available for a select range of topics, and is updated as legislation and interpretive positions evolve.

While these information sources are designed to address the most commonly encountered tax issues, the CRA recognizes that members of the general public or the income tax service provider community may require assistance in accessing specific, relevant guidance when more complex issues are encountered related to their preparation of a tax return. This assistance may be accessed in various ways.

The Dedicated Telephone Service was created in 2017 to provide free technical help to small and medium income tax service providers who prepare, or assist in the preparation of Canadian income tax returns on behalf of individuals or businesses. An income tax service provider is a firm, organization, or tax practitioner, such as an accountant, bookkeeper or lawyer, that provides audit, accounting, tax, and/or other advisory services. Once registered for the service, an income tax service provider has access to experienced CRA officers by telephone who will help find the information needed to interpret the provisions of the Income Tax Act at issue in their situation. This may include, if

applicable, severed copies of relevant opinions prepared by the Income Tax Rulings Directorate. For more information or to register for the Dedicated Telephone Service, please visit “Dedicated telephone service for income tax service providers: How to register” on canada.ca[1].

Individuals who encounter more complex situations when preparing a tax return may contact the CRA directly for guidance and access to relevant information sources that may apply to their particular situation. This may include, if applicable, severed copies of relevant opinions prepared by the Income Tax Rulings Directorate. Those who wish to contact the CRA directly can obtain additional information (including telephone numbers for different subject areas) by visiting “Contact the Canada Revenue Agency” on canada.ca[2].

Questions that are wholly of an interpretive nature can also be submitted directly to the Income Tax Rulings Directorate, which is the centre of income tax interpretive expertise within the CRA. The Income Tax Rulings Directorate provides interpretive guidance on complex technical issues through a variety of products and services, which include advance income tax rulings and technical interpretations. If the question has already been addressed in one or more earlier interpretations, the Directorate will provide severed copies directly to the individual; otherwise, a new interpretation may be needed.

For more information about how to obtain an advance income tax ruling or technical interpretation from the Income Tax Rulings Directorate, see the CRA’s Information Circular IC70-6R11, Advance Income Tax Rulings and Technical Interpretations[3].

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[1] GOVERNMENT OF CANADA, Dedicated telephone service for income tax service providers: How to register, (online: https://www.canada.ca/en/revenue-agency/services/tax/tax-professionals/dedicated-telephone-service.html)

[2] GOVERNMENT OF CANADA, Contact the Canada Revenue Agency (online: https://www.canada.ca/en/revenue-agency/corporate/contact-information.html)

[3] GOVERNMENT OF CANADA, IC70-6R11 Advance Income Tax Rulings and Technical Interpretations (online: https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/ic70-6/ic70-6-advance-income-tax-rulings-and-technical-interpretations.html)

GST – AUDIT

Question Type: Admin/Process

QUESTION: The legislation is very clear in section 296 of the ETA that the Minster shall assess allowable credits as part of net tax when these are discovered, both ITCs and rebates. This has never been disputed by the CRA.

Why are we still finding reviewers and Team Leaders who are telling registrants to claim these credits themselves? This results in an illegal assessment and creates interest revenue for the CRA as a direct result.

We know that the CRA system makes it difficult for anyone outside of CRA Summerside to process rebates. Can we please hear how the CRA plans to rectify this in the future?

ANSWER: It is currently clear in our GST/HST Audit and Examination Manual that during an audit or examination, if an auditor or examiner uncovers unclaimed ITCs or rebates to which the registrant is otherwise entitled, pursuant to subsections 296(2) and 296(2.1) of the *Excise Tax Act* (ETA), these unclaimed ITCs or valid rebates must be allowed and brought to the registrant's attention to minimize the tax payable resulting from the proposed adjustments.

In June 2021, we disseminated updated procedures to all our GST/HST audit program areas in order to streamline and maintain a consistent approach across all GST/HST Programs for the processing of allowable unclaimed rebate amounts pursuant to subsection 296(2.1) of the ETA. These updated procedures outline the responsibilities of the auditor or examiner, how to determine eligibility of the unclaimed rebate amounts, the administrative and process requirements and the system related procedures that should be followed. We also redrafted the relevant parts of the GST/HST Audit and Examination Manual to reflect the updated procedures.

As well, we continue to stress to our auditors and examiners that it is their responsibility to apply an eligible rebate amount if they identify that it is a valid unclaimed rebate at the time that they are making an assessment of a person’s net tax or of any amount that became payable by the person. It is important to remember that the auditor or examiner must be able to determine the validity of the unclaimed rebate amount and may therefore request further documentation. If the auditor or examiner cannot validate the unclaimed amounts, they will not allow the adjustments.

We trust that by updating our procedures and redrafting the relevant parts of our audit manual, we will be able to avoid further confusion over the application of subsection 296(2.1) of the ETA and ensure consistency in our audit programs.

GST - NEW EPLATFORM RULES

Question Type: Admin/Process

QUESTION: The CRA has announced in conjunction with the Department of Finance, that the CRA will be lenient and reasonable with new (or soon to be new) registrants, that have made their best efforts to comply, but could not do so, as a result of “operational reasons”. Can the CRA comment on some perceived examples of where the agency would be so lenient?

ANSWER: The 2021 Federal Budget committed the Canada Revenue Agency (CRA) to working closely with businesses and platform operators to assist them in meeting their obligations under the new digital economy rules. As stated in the Budget, where affected businesses and platform operators show that they have taken reasonable measures but are unable to meet their new obligations for operational reasons, the CRA takes a practical approach to compliance and exercises discretion in administering these measures during a 12-month transition period, starting July 1, 2021.

Before the CRA exercises its discretion in the administration of the new measures, an affected business or platform operator must first obtain the CRA’s written approval that such discretion will be exercised. Submissions requesting the CRA’s approval may be made after July 1, 2021, until further notice.

The CRA may consider a range of factors when reviewing a submission to determine if the exercise of discretion is appropriate. Because there may be operational issues unique to each business or platform operator, the submission should ensure that sufficient detailed information is provided to justify the request. In particular, a business or platform operator should be able to explain the systems issues it is encountering which prevent it from being able to charge, collect, report and remit the GST/HST in accordance with the new digital economy measures.

QUESTION: If there are issues with non-resident simplified registration system or the lengthy current delays (known to be up to 4 months or longer) of the non-resident regular registration systems are cause for the delay, will the CRA waive all penalties and interest in the first 12 months following July 1, 2021?

ANSWER: Where the CRA has exercised its discretion in respect of a registrant, the registrant will be able to register with a later effective date which can vary depending on the situation but will not be beyond July 1st, 2022. This later registration date will be used in determining filing obligations as well as any penalties and interest that may apply.

Regarding registration delays, simplified registrations are being completed within 10 business days as long as all of the information is provided. They should not be impacted by any delays.

The CRA is aware that there are some delays in some instances with the regular registration process and we are taking steps to address the delays. CRA will make any effort to prioritize the regular registrations that fall under the digital economy. In order to do this, please identify clearly that the registration is involved in the digital measures. CRA will review accounts as part of the registration process and provide registrants with options to avoid or remove penalties and interest that may apply.

QUESTION: Where non-residents affected by the new GST/HST remote seller rules, that need to confirm the purchaser's GST/HST registration number, what evidence will be considered satisfactory to satisfy the Minister that the non-resident seller obtained a particular number?

ANSWER: Registrants are expected to exercise due diligence in determining their vendors and/or purchasers' GST/HST registration numbers.

As part of its mandate, the CRA enforces compliance within the current legislative framework as well as the new provisions to ensure proper registration, collection and remittance of the tax. Any non-compliance identified during our reviews will be addressed on a case-by-case basis. Acceptable evidence of due diligence will depend on the circumstances and facts of each individual case.

Registrants can refer to the CRA GST/HST Registry Search for assistance with validating GST/HST registration numbers.

PROCESSING DELAYS

Question Type: Admin/Process

QUESTION: What is causing the delays in processing slips in the My Account / RAC system? It can sometimes take well over a month for T4s or T5s that were filed electronically to appear in CRA's system, which makes the Autofill My Return function mostly useless for clients who are ready to file in March.

ANSWER: T4 and T5 slips that are filed electronically through our online portals are subject to system validations. Returns that are filed electronically must meet the criteria set out in our XML specifications, schemas and guides, which are posted on our website. Delays may occur if these requirements are not met or if our systems are unable to read the data provided. Some returns may require additional review,

which could also result in delays with processing of the slips. Electronic returns that pass all validations are usually processed within 2 business days.

ESTATES/TRUSTS AND NONRESIDENT WITHHOLDING TAX

Question Type: Admin/Process

QUESTION: Where income of an estate or trust is payable to a beneficiary, it is deductible from the income of the estate or trust, and becomes taxable to the beneficiary. For a beneficiary who is a resident of Canada, the income is required to be reported by the beneficiary in the year of the estate or trust's year-end, and reported on a T3 slip, regardless of whether it was paid or payable.

Estate or trust income is generally subject to Part XIII tax when paid to a non-resident beneficiary. Where such income is not paid within 90 days of the year-end of the estate or trust, and the estate or trust remains resident in Canada, it is deemed paid on the 90th day after that year-end (Subsection 214(3)(f)).

For a typical estate or trust having a December 31, 2020 year-end (for example), this would mean that, for income payable at year-end, but unpaid 90 days after year-end, is deemed paid at that time (March 31, 2021), such that the Part XIII withholding tax is due by April 15, 2021, and both the income and withholding tax should be reported on an NR4 slip issued for 2021.

(a) Can the CRA confirm that this matches their technical understanding of the provisions?

ANSWER: The CRA can partially confirm that this matches the technical understanding of the provisions. In the example provided, you indicated that the NR4 slip would be issued for tax year 2021. This is incorrect, as the NR4 slip should be issued for tax year 2020 because the deemed payment of Part XIII tax for income payable at the trust's year-end is still attributable to tax year 2020.

QUESTION: (b) Can the CRA advise what guidance is given to the non-resident withholdings section in this regard? It is very common for remittances of this nature, paid to CRA by April 15, to be assumed to relate to the prior calendar year, resulting in a credit to the wrong year, and a penalty assessment.

ANSWER: The CRA provides guidance to the Non-Resident Withholding Section (NRWS) to determine if a penalty is valid or not. If there is an issue with the validity of a penalty being assessed incorrectly, contact should be made to the NRWS. An officer in NRWS will follow procedures to determine if the penalty is valid or not and take action as required.

It is important to note that the NR4 slip should be issued for tax year 2020 in the example that you provided in (a). In some cases, the remittance of Part XIII tax attributable to a year-end payment of income (2020) from an estate/trust is misallocated to a period in the following tax year (2021). As such, late-remitting penalties may be levied, in error. That said, these late-remitting penalties can be cancelled once the CRA is provided additional information regarding the timing of the payments made to the non-resident.

PROCESSING OF SECTION 116 CLEARANCE CERTIFICATES

Question Type: Admin/Process

QUESTION: Based on feedback, it is taking approximately 4 to 6 months for the CRA to issue a certificate of compliance and there are reports of the CRA losing information that was already submitted to them. What are CRA's plans to address this back log?

ANSWER: The CRA agrees the general processing timeframe for Section 116 Certificates of Compliance (certificates) is currently on average 4-6 months. The CRA has had to change the way it processes certificates in light of the ongoing COVID-19 pandemic.

At the outset of the COVID-19 pandemic, all requests for section 116 certificates of compliance, and all final certificates and letters were received and sent by traditional ground mail. The CRA has worked extensively to find and implement processes for taxpayers and their representatives to securely send and receive information electronically. However, the implementation of these processes was lengthy in order to ensure the secure transmission of taxpayer information. In March of 2021, the CRA communicated the introduction of these new processes to key stakeholders, including the Chartered Professional Accountants Canada, Canadian Real-Estate Association, Canadian Bar Association, and announcements on CRA's social media platforms. For information on new ways of submitting request electronically see: Disposing of or acquiring certain Canadian property.

Form T2062 notifications are processed on a first-in-first out basis in each of CRA's five Section 116 Centres of Expertise. The CRA strives to process these notifications as efficiently as possible as we do understand the hardship that can be caused by undue delays.

With regards to lost documentation, the CRA confirms there were cases of lost documentation, particularly during the early weeks of the pandemic (March 2020). In each circumstance where a piece of documentation was lost, the document had been sent by mail. The situation was easily rectified by the taxpayer or representative resending the documentation electronically or by fax. In almost all cases the document was not lost but delayed in being delivered to the applicable Centre of Expertise.

The following are best practices on what taxpayers and representatives can do to decrease delays in processing the certificate of compliance.

With respect to the T2062 notification:

- Send the T2062 notification electronically using one of the CRA's portals- My Account, My Business Account, or Represent a Client. The taxpayer does not even need to have an ITN before you as representatives can send the file using Represent a Client. For detailed instructions on how to submit using Represent a Client, see **Where do I send my completed notification form?** on the webpage Disposing of or acquiring certain Canadian property - Canada.ca. You can also send the T2062 notification by fax to 1-833-329-1161. Using either of these methods ensures the CRA receives the T2062 notification immediately and also reduces the probability of the file being misplaced.
- Ensure the T2062 notification is complete and all supporting documentation is attached. We have found over the last several years, that approximately 40% of T2062/T2062A notifications we receive are incomplete. An incomplete notification results in delays since the vendor or representative has to be contacted to request the missing information. When all of the documentation is provided, the certificate can be processed quickly.
- If the property is a rental property, both a T2062 and a T2062A are required: the T2062 is required for the capital gain or loss on the disposition of the land and on the depreciable property; and the T2062A is required to report any recapture of CCA or terminal loss on the disposition of the depreciable property. A breakdown between the land and building is also required.
- If the property is a principal residence, include a Form T2091: T2091(IND), Designation of a Property as a Principal Residence by an Individual (Other Than a Personal Trust), signed by the non-resident vendor.
- When there is more than one vendor, a separate notification must be filed for each individual, based on their percentage of ownership in the property.
- If the vendor was formerly a resident of Canada the "date of departure" must be provided on the notification.
- Provide the complete address of the property, including the postal code.
- Provide the vendor's non-Canadian address not just a Canadian "care of" address.
- Answer all questions on the form whether or not they apply. The CRA cannot assume that the answer to an unanswered question is "NO" or "N/A".
- If the property was not rented, please indicate the use of the property as requested in question #2 on the T2062 and the T2062A forms.

- Provide the actual sale price, not the “net” after deducting outlays and expenses (outlays and expenses cannot be claimed on the T2062/T2062A to reduce the gain subject to Section 116. These expenses can be claimed on the non-resident’s tax return filed subsequently).
- Ensure the notification form(s) is/are signed.
- If you are using a cover letter, use the term “Certificate of Compliance”; using the term “clearance certificate” may cause the application to be distributed to another area (specifically Trusts), causing a delay.
- Include all requested supporting documents from the supporting documents List (found on the T2062 and related forms), such as:
    - the offer to purchase (proposed disposition);
    - the sales agreement (actual disposition);
    - the purchase agreement (at the time the current NR vendor acquired the property);
    - a list of any additions to the property and receipts/invoices to support the additions;
    - if the property is a rental property, provide documents/explanation to support the allocation of the proceeds between land and building;
    - details regarding any change of use (from income-producing to personal use or vice versa) in the property since the property was purchased;
    - for transactions between non-arm’s length parties, provide an appraisal report or letter of opinion from an appraiser or agent to support the fair market value at the time of the transaction.

With respect to the T1261 Individual Tax Number application:

The Canada Revenue Agency can no longer process applications for an individual tax number (ITN) alongside the T2062 notification, and the ITN application cannot be sent electronically. The T1261 must be sent separately to the address on the form. Do not send it with the T2062 notification. The T1261 and T2062 forms are then separated in the mailroom, increasing the chance of documents being misdirected.

- The T1261 must be signed by the applicant. The signature on the T1261 must be an original, it cannot be a photocopy.
- Make sure to tick the applicable box on the form under the section “Indicate the reason you are applying for an ITN.” This will ensure expedited processing of the ITN.
- Make sure the supporting documents are complete and valid. The supporting documents must:
    - be current;
    - verify identity of the non-resident, including name and date of birth;

- be original or a certified or notarized copy;
- include a photograph of the individual.

- Whenever possible, request the ITN as far in advance as possible. Counsel non-resident clients to request an ITN as soon as they are considering selling their property. It is mandatory that the taxpayer has an ITN (or Social Insurance Number or Business Number) before the certificate can be issued.

PENALTY RELIEF

Question Type: Admin/Process

QUESTION: Would the CRA consider making penalty relief more readily available where errors and omissions are corrected voluntarily, but outside the context of a formal submission under the Voluntary Disclosure Program? Specifically, can the CRA offer any comments on whether they are taking action in light of comments made by the Tax Court in the Moore case (2019 TCC 141)?

In the Moore case, the Tax Court made several unfavourable comments regarding the imposition of penalties (in this instance for the T1135), the accessibility of information to the average taxpayer, the voluntary disclosures process and taxpayer relief. We would specifically draw the CRA's attention to the Court's comment:

As a final observation, I would ask the rhetorical question, "Is Mr. Moore's disclosure to CRA on a voluntary basis of his failure to file a 2015 information return not the type of compliance effort CRA wants to encourage Canadians to follow?

ANSWER: We can confirm that there are no plans to make changes to the Voluntary Disclosures Program (VDP) relief process at this time. Any decision to automatically grant penalty relief outside of the context of a formal submission under the VDP would be a decision that would need to be made by individual CRA programs.

The VDP promotes compliance with Canada's tax laws by encouraging taxpayers to voluntarily come forward and correct any previous errors or omissions in their tax affairs. The judge in the Moore case correctly highlighted that VDP would have been a tool for Mr. Moore to use in order to correct his tax affairs and avoid going to court.

The Taxpayer Relief Program remains available for taxpayers seeking relief from penalties and interest when they have not met their tax obligations due to circumstances beyond their control. This includes situations such as financial hardship or inability to pay, death, accident,

serious illness, emotional or mental distress, natural or human-made disasters, civil disturbance or disruption of service, or CRA delay or error.

For more information about relief from penalties and interest and the related forms and publications, go to canada.ca/penalty-interest-relief.

PERSONAL TAX CLAIMS

Question Type: Admin/Process

QUESTION: Some years ago, we understand that the CRA provided a “Top 10” list of the line items on a personal tax return which are most frequently adjusted when supporting documentation is reviewed. Can the CRA provide a current listing in this regard and, ideally, a summary of the common errors reassessed?

ANSWER: Our common adjustments web page includes some tips to reduce the number of reassessments we do each year. We are currently in the process of reviewing the content and the revised web page will be updated shortly. For more information, go to Common adjustments - Canada.ca.

PRE-ASSESSMENT AND PROCESSING REVIEWS

Question Type: Admin/Process

QUESTION: What is CRA's policy for agents calling to clarify review support submitted by the representative (especially when the claim is for such a large amount)?

Related to CRA pre-assessment and processing reviews, is it standard protocol for CRA agents when processing review replies to reject claims where information appears to be missing? We find some claims (worth over $40,000) are getting rejected because of a misunderstanding of information provided (ie. agent believes information is missing). Often for larger, more complex reviews where we provide much but perhaps not all information available so to not overwhelm with paperwork. We often add in the letter if you require additional information to call however that rarely occurs and most of the time the entire claim is rejected. Months later after a second submission or objection filed, the claim is restored however a phone call could have saved time or money.

ANSWER: CRA's procedures for these reviews do not take the amount of the claim into account. All taxpayers are subject to the same procedures to ensure fair treatment. The Pre-assessment Review, Processing Review, and Request Verification programs are instructed to call a taxpayer or their authorized representative in situations where it is clear that information is missing or that it is believed that our letter is misunderstood. Our procedures direct the assessor to attempt to contact the taxpayer or their authorized representative a maximum of 3 times and to document each attempt. This information is also reflected in our training products. When contact is made by telephone, depending on the situation, taxpayers or their authorized representatives are given 30 days to send in new information and 10 working days to send in missing information.

We suggest submitting all relevant documents at once when sending replies to our letters. Although this might seem overwhelming, it is the preferred method. Assessors deal with large volumes of work, and it is not practical to call every taxpayer or representative.

We encourage you to send your client's documents online. You can send us your scanned documents online using Represent a Client. For more information, go to Income tax review? You've got this! - Canada.ca and select "Submitting documents online."

SERVICE STANDARDS

Question Type: Admin/Process

QUESTION: Will CRA be re-establishing its service standards? We have been told that, due to COVID, the service standards posted on CRA's website (https://www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/service-standards-cra/servicestandards- 2020-21.html) do not apply.

ANSWER: The service standards on our website **apply** and we will **continue to try to meet them,** but targets may be harder to achieve in light of COVID-19 and its impact on operations.

COMPILATION ENGAGEMENTS AND SCH 141

Question Type: Admin/Process

QUESTION: With the upcoming implementation of 4200 (Compilation Engagements), in which tax preparation only is considered out of scope, will the T2 questions on T2 Schedule 141 be changed to enable tax preparers to state they are in fact the "accountant" without having to indicate that they have completed a compilation or other financial statement engagement?

ANSWER: While Part 4 of the schedule can be completed in situations where the tax return and financial statements were prepared by different persons or the financial statements were not prepared, we agree that there are some areas of the T2 Schedule 141 that may not align with CSRS 4200 engagements standards. We will review the schedule and process any changes that are needed in order for it to align with the new standards. See Helpful hints for completing Schedule 141**.** Thank you for bringing this to our attention.

VOLUNTARY DISCLOSURE PROGRAM (VDP)

Question Type: Admin/Process

QUESTION: The COVID-19 pandemic appears to have significantly delayed voluntary disclosure processing. We are aware of one situation where the VDP officer's voice mail continues (at mid-June, 2021) to indicate that the COVID-19 pandemic has delayed VDP work in progress. Repeated messages have resulted in no contact from the VDP division.

(a) What is the status of existing VDP requests? From the above, this workflow does not appear to be reinstated, unlike most CRA operations.

ANSWER: The Voluntary Disclosures Program (VDP) resumed operations in June 2020 after a delay of approximately 4 months. VDP has taken the necessary steps to address its inventory backlog by improving its workload management processes in addition to increasing its staffing resources.

QUESTION: (b) How can taxpayers, or their advisors, obtain an update on the status of a VDP in progress?

ANSWER: An applicant or an authorized representative who would like to speak to someone from the VDP program can always call general enquiries or business enquiries to request a call back from a VDP officer.

- **Individuals** (Canada and the United States): **1-800-959-8281**
- **Businesses** (Canada and the United States): **1-800-959-5525**

For all other telephone numbers, go to Contact the Canada Revenue Agency

DECEASED TAXPAYERS

Question Type: Admin/Process

QUESTION: Could CRA provide an update on upcoming enhancements related to the services for representatives for deceased taxpayers. We heard a number of concerns regarding authorizations, submit documents etc.

ANSWER: CRA is planning to implement enhancements in the Fall of 2022 to allow legal representatives of deceased sole proprietorship business accounts, to interact with us using our online services. Legal representatives will have similar privileges and accesses as a level 3 (delegate) representative which includes submit documents, update address, and request an account closure just to name a few services.

Note that for individual accounts, representative authorizations no longer automatically expire when we are notified of the death of a client.

PHONE

Question Type: Admin/Process

QUESTION: We received many comments and suggestions around CRA's phone systems. In general, many members expressed frustration around wait times and asked if CRA is considering specific phone lines for tax practitioners, and also special lines for specialized divisions (for example trusts and estates). Could CRA provide an overall update on upcoming plans for CRA's phone systems, and whether there will be any specific changes for Tax Practitioners.

ANSWER: We appreciate the feedback about the wait times. When CRA transitioned from the legacy telephony system to the current HCCS system, it was to ensure that callers would have the opportunity to enter the queue and not receive a busy signal based on feedback from the public, including tax practitioners. In discussions and other feedback received since the transition to HCCS, we appreciate that the wait times have increased significantly. Since the start of the pandemic the CRA contact centres have been integral in ensuring that Canadians are receiving the emergency and recovery benefits for which they qualify. We currently offer call routing options to speak with agents with particular training and skills to best respond to enquiries and recognize that there are still areas that can be improved. We continue to review options to streamline the assistance provided to tax practitioners and other members of the public.

GST/HST NEW HOUSING AND RENTAL PROPERTY REBATES

Question Type: Interpretation

QUESTION: In the Zdzieblowska case (2019 TCC 40), the Court suggested that a taxpayer who had claimed the new housing rebate (NHR) in error, but would have been eligible for the residential rental rebate (RRR), could advance a claim for the RRR past the normal deadline, if done in the context of a reassessment denying the NHR (Subsection 296(2.1)).

This appears to be possible only if the taxpayer waits for the CRA to discover the error, and is an opportunity lost for a taxpayer who proactively attempts to correct their error. This seems inequitable. Can the CRA comment whether they concur with the comments of the Court (which were clearly obiter dicta), and whether they would permit such a claim to be undertaken more proactively?

ANSWER: Although we will not comment on the Court's remarks in *Zdzieblowska v The Queen* (2019 TCC 40) regarding the potential application of subsection 296(2.1) of the *Excise Tax Act* (ETA) where a claimant filed a GST/HST New Housing Rebate (NHR) in error but would have been eligible for the GST/HST New Residential Rental Property Rebate (NRRPR), we can confirm that we do have procedures in place to deal with similar situations. Pursuant to subsection 297(1) of the ETA, all GST/HST rebate applications must be assessed. It is during the review (assessment) process that we determine a claimant's eligibility for a particular GST/HST rebate.

If an NHR was filed in error, the NHR was under examination or audit, and an amount would become payable as a result of the denial of the NHR, the CRA would consider the claimant's eligibility for an NRRPR. Where the auditor or examiner determines that the claimant is in fact eligible for an NRRPR, the NRRPR amount would be offset against any amount owing from the denial of the initial NHR application. This would also be the case where the examination or audit continued beyond the relevant two year rebate filing time frame.

If a claimant would like to proactively correct a rebate claim where they submitted an NHR in error, and the NHR was paid to the claimant or credited to them by their builder, the claimant may request a re-assessment of the initial NHR claim. In these cases, the CRA may consider re-assessing the NHR and make any necessary adjustments just as we would where the error is discovered during an audit or examination. Please note that it is important that the claimant NOT file another rebate claim to try to correct the situation as this will affect our ability to offset the NHR claimed in error. The claimant may send their request in writing to the same tax centre they sent their original application (either the Prince Edward Island Tax Centre or the Sudbury Tax Centre). For information regarding adjusting a rebate claim, please see the CRA website at: https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/gst-hst-businesses/gst-hst-rebates.html

RE-APPROPRIATIONS

Question Type: Interpretation

QUESTION: Several years ago, CRA announced a review of their application of Section 221.2, specifically where a corporate taxpayer failed to file a tax return within three years of its year-end and was denied a refund as a consequence. Since that time, further case law has suggested that the CRA's processed fail to deliver a reasonable result (e.g. Forbes Painting and Decorating; 2019 FC 160). Can the CRA provide an update of this review, including the impact of these decisions on their processes?

ANSWER: The CRA has adopted a more flexible approach in determining a corporation's eligibility to use statute-barred credits for re-appropriation. Reviews and resulting changes consider feedback and outcomes from recent court decisions.

Revised guidelines were issued and include a greater variety of extenuating circumstances to consider when reviewing the inability of corporations to file T2 returns in a timely manner. Furthermore, greater emphasis will be placed on the on-going financial hardship experienced by corporations when available credit amounts are deemed statute-barred.

TAX ON SPLIT INCOME – SERVICES RESTRICTION TO EXCLUDED SHARES

Question Type: Interpretation

QUESTION: In June 2019, the CRA added six examples addressing the requirement that less than 90% of a corporation's business income come from services to be eligible for the excluded shares exception. While this provided many useful elements of CRA's interpretation, one issue has caused considerable uncertainty. Examples 4 and 5 addressed the provision of "incidental goods" in the course of providing services. In Example 6, however, CRA opined that the "services" (labour) and "goods" (materials) components of mixed revenues should be split out for purposes of this analysis.

Can the CRA elaborate on how businesses which provide only incidental goods in the course of service delivery (or incidental services in the course of selling goods) are to be differentiated from businesses which provide a mixture of goods and services in a single transaction?

ANSWER: Pursuant to clause (a)(i) of the definition of "excluded shares" in subsection 120.4(1) of *the Income Tax Act*, in order for shares of a corporation to qualify as "excluded shares", less than 90% of the business income of the corporation must be from the provision of services.

In applying this test, the CRA considers that a gross business income test should be applied, that is to say, it should be based on revenue or sales before any expenses.

In determining whether what is provided by a corporation is or is not a service, and whether revenues from a transaction should be considered to be derived from services, non-services or both, the CRA will consider a number factors including, but not limited to:

- the nature of the corporation's business
- the underlying nature of what is being provided - what is the customer seeking to acquire?
- the agreements between the parties to a transaction
- normal business practice and billing arrangements in a particular sector
- the materiality of one element versus the other in the value of the transaction

Example 4 demonstrates incidental use or consumption of goods in the provision of services. In this example, the cleaning products are incidental to the services, since they were used or consumed in providing the services. Ultimately, in this situation, the customer is seeking to have their premises cleaned.

Example 5 describes a situation where the corporation, in addition to providing cleaning services, sells cleaning supplies and equipment, perhaps to other businesses providing cleaning services, or to it’s own customers but separate and apart from the cleaning services. In this example, the goods are not incidental to the service as they are acquired by the customer for their own use.

In example 6, a contractor is engaged to supply the materials for and carry out the construction of a deck. In this situation, the materials are significant enough of an element in the construction of the deck that the business provides both a service and non-service component.

The corporation supplied all materials and labour when constructing and repairing decks. The service component was the labour provided. Given that customer is acquiring an improvement to their property in the form of the deck which is a tangible improvement affixed to the customer’s property, to the extent that the revenues reflect the provision of the materials, they are considered a non-service component provided together with, as opposed to incidental to, the services.

LOANS TO SHAREHOLDERS AND THE TAX ON SPLIT INCOME (TOSI)

Question Type: Interpretation

QUESTION: A loan to a shareholder may result in an income inclusion (Subsection 15(2)) to a shareholder or connected person. It is possible that this income inclusion could be subject to the TOSI. In such a case, it would be deducted from income (Paragraph 20(1)(ww)). Normally, a deduction is available on repayment of a shareholder loan (Paragraph 20(1)(j)), however this applies only where the amount has not previously been deducted.

Does the CRA consider a deduction under Paragraph 20(1)(ww), because the loan advance was subject to TOSI, to prevent any future deduction on repayment of the loan?

ANSWER: No. Paragraph 20(1)(ww) provides a deduction in computing income, whereas the bracketed phrase contained in paragraph 20(1)(j) only applies to deductions in computing taxable income.

ACCELERATED INVESTMENT INCENTIVE (AII)

Question Type: Interpretation

QUESTION: Enhanced first-year capital cost allowance claims are available on virtually all assets which are acquired, and become available for use, after November 20, 2018. While this is fairly easily determined for many asset acquisitions, how is it to be applied to assets which were under construction on November 20, 2018? The possible answers seem to be:

(a) The AII will be available on the entire cost of the asset on its completion – it is considered “acquired” in its entirety only when it is completed

(b) The AII will not be available if construction of the asset commenced prior to November 21, 2018 – it was considered “acquired” when construction commenced.

(c) The AII will be available only on the portion of the asset constructed after November 20, 2018. Taxpayers will be required to allocate the total cost to the two periods on some reasonable basis.

(d) Some other possibility not considered above.

Can the CRA confirm how the rules will apply for assets under construction?

ANSWER: To respond to this question the following assumptions were made:

- All relevant transactions take place with arm's length parties at fair market value.
- The asset under construction is a building.
- Neither capital cost allowance ("CCA") nor a terminal loss has been claimed in respect of the building.
- No part of the building has been previously owned or acquired by the taxpayer or any other party.

The Accelerated Investment Incentive ("AII") provides an enhanced first-year allowance for certain eligible property that is subject to the CCA rules. The AII does not change the total amount of CCA that may be deducted over the life of a property but allows a larger CCA deduction in the first year followed by smaller deductions in later years. Please refer to the Canada.ca webpage for more information about the AII.

Among other requirements, in order to be eligible for the AII, property must be acquired by the taxpayer after November 20, 2018 and become available for use before 2028.

Where a building (or other structure) is being erected by or for a taxpayer on land owned by the taxpayer, they are considered to have acquired a building (or other structure), at any particular time, to the extent of:

- the construction costs incurred by the taxpayer to that time, including the cost to the taxpayer of materials that have been put in place, but not including holdbacks that constitute a conditional liability (for example, a holdback which requires that the work be approved by the taxpayer's architect or engineer before payment), or
- progress billings received by the taxpayer to that time, net of any holdbacks that constitute a conditional liability.

Accordingly, where the construction of a building straddles November 20, 2018, there will be, generally speaking, two components of the building for the purpose of the AII:

- the portion of the building (i.e. the construction costs) acquired before November 21, 2018; and
- the portion acquired after November 20, 2018.

Only the portion of the building acquired after November 20, 2018 will be eligible for the AII (provided it becomes available for use before 2028).