



January 23, 2015

Via email: Danielle.lafleche@cra-arc.gc.ca

Ms. Danielle Laflèche
Director General
Excise and GST/HST Rulings Directorate
Canada Revenue Agency
320 Queen Street
Ottawa, ON K1A 0L5

Dear Ms. Laflèche:

Re: External Stakeholder Consultations

I am writing on behalf of the Canadian Bar Association's Commodity Tax, Customs and Trade Law Section (CBA Section) in response to the Canada Revenue Agency's (CRA) draft papers sent on December 22, 2014 on External Stakeholder Consultations.

The CBA is a national association representing over 36,000 jurists, including lawyers, Québec notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice. The CBA Section comprises lawyers from across Canada who deal with law and practice issues relating to commodity tax, customs and trade remedy matters.

We appreciate the opportunity to provide comments on the formulation of CRA administrative policy in an area of importance to taxpayers, consultants and other stakeholders.

We comment on each of the discussion papers in turn.

Paper 1: Guidelines to Determine When to Seek External Stakeholder Input on GST/HST Technical Publications

We generally view the guidelines and discussion paper favourably. We suggest including some additional situations to determine whether the CRA should seek external stakeholder input:

- Situations where there has been broad non-compliance by taxpayers. Non-compliance may exist beyond a single industry and may be tied to uncertainty in rules that apply to a broad range of taxpayers. External stakeholders may be able to explain the reasons for non-compliance and make suggestions to assist the CRA in communicating its policy. For example, commodity tax practitioners may have experience assisting clients navigate through the CRA's administrative materials and recognize instances where the CRA's message is not being properly received by their clients.

- Some industries do not have formal professional or industry associations or their representation within an association is fragmented. In these cases, commodity tax practitioners with experience in the particular industry may be able to assist in consulting on the issue. The CRA may wish to expand the guideline for professional or industry associations to include commodity tax practitioners recognized for their expertise in the particular industry.

Paper 2: "Full Circle" Approach for Impacted Parties

While the CBA Section understands the objectives of the "full circle" approach, including the benefits of communicating a ruling to both impacted parties and inviting input from both parties in the course of drafting a ruling, we are concerned with the implementation and administration of this approach. The proposal generated significant discussion and a number of questions within the CBA Section. We suggest a meeting between the CBA Section and the CRA to allow for a better understanding of the proposal and to discuss the concerns and challenges that the proposal raises.

To illustrate some of the topics for future discussion, our concerns include the following:

- one of the parties to a transaction may not want a ruling;
- whether the CRA can compel an unwilling person to participate in a ruling request;
- the consequences if a party refuses to participate, for example, would it trigger an audit;
- whether one party to an agreement would still be able to send an agreement with the other party's identity redacted for a ruling without the consent of other party.

Paper 3: Request Letters

The CBA Section agrees with the CRA's effort to expedite the ruling and interpretation process and close unresponsive files. However, we have concerns with the CRA's proposal as currently drafted.

The recommendation relates to situations where the CRA has not received sufficient information or documentation to support a ruling request. The proposal may not give taxpayers sufficient time to respond to the CRA's request for additional information. Specifically:

- Ten working days is not sufficient time for taxpayers to properly respond. A request letter sent by regular mail may take two to five days to arrive. The person requesting a CRA ruling (requestor) may not be in the office (e.g., on vacation, traveling on business) or dealing with a work emergency. We suggest a minimum 30 day period to respond.
- The timelines should take into account the type and volume of information requested. It may take longer than 30 days to access information that requires the assistance of information technology staff or is stored off site. The requestor's employee resources should also be considered in determining the timelines. The requestor may not have the staffing to fulfill the CRA's request for additional information within the 30 day time period.
- The timelines should contemplate the gap in time between the initial ruling request and the CRA's request for additional information or documentation. The greater the lag between the information request and ruling request, the longer the time should be for the requester to respond. For example, if the information request is received two years after the ruling request is submitted, the information may no longer be readily available or key personnel may have left the company.
- We suggest that the CRA's first request for information be made in writing and provide a timeline for responding. This can be followed up by a phone call where the parties discuss and agree on a timeline. Once the parties have had this discussion, it would be appropriate to send the request letter asking for a response by the agreed date.

- In some scenarios, the CBA Section finds it acceptable if the initial contact with the requestor is through a telephone call and the request letter is sent after the call. In these circumstances, the parties would have an opportunity to discuss the CRA's request and the requestor's ability to respond in a certain time.
- In our view, a voicemail message does not constitute sufficient notice of the CRA's request for information. Voicemail messages may be lost or missed. They are also one-way communications that do not allow the parties to discuss the nature of the request and agree upon a timeline for a response.
- The draft request letter does not allow the requestor to ask for an extension of time to respond. The letter should contain language allowing the requestor to seek an extension. The request for an extension may ask the requestor to provide reasons for seeking the extension, which must be reasonable.

We thank you for the opportunity to comment on these drafts and would welcome further discussion on any of the points raised.

Yours truly,

(original letter signed by Noah Arshinoff for Maurice Arsenault)

Maurice Arsenault
Chair, Commodity Tax, Customs and Trade Law Section