



March 23, 2020

Via email: Lafleche@Canada.ca

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

Dear Ms. Laflèche

Re: Approach for remote signing

In light of social distancing measures mandated in relation to the current COVID-19 situation, the Real Property Section of the Canadian Bar Association (CBA Section) wishes to propose to the CRA two points of policy to be amended as a temporary expedient for the execution of supporting documents on tax rights and liabilities. The CBA is a national association of 36,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice.

Wet Signatures

To date, the CRA has required “wet signatures” (i.e., manuscript ink on paper) on the *GST/HST New Housing Rebate Application for Houses Purchased from a Builder* form for the rebate of GST or HST on new home transactions.

At present, builders’ counsel taking assignment of HST rebates must insist on hardcopy documents on closing, signed by the purchasers with wet signatures. With social distancing measures, purchasers are now meeting with their solicitors by teleconference, so the ability of all parties to produce and deliver wet signature documents by conventional methods is significantly challenged.

The CBA Section asks the CRA to issue a comfort letter or policy statement that, until further notice, it will accept these forms with a digital or facsimile signature in the same manner as a wet signature.

Accommodations have been adopted in other contexts and by other agencies. For example, the Law Society of Ontario has permitted virtual commissioning¹, so the commissioner need not be in the physical presence of the client or deponent to swear oaths or to commission documents, and allows for the commissioned document to be executed remotely.

¹ [Law Society of Ontario](#)

Income Tax Act s. 116 Declarations

The position taken by the CRA in *Kau v. The Queen* 2018 TCC 156 (CanLII) suggests, *inter alia*, that it requires a statutory declaration from a vendor confirming that they are not a non-resident of Canada as defined in s. 116 of the *Income Tax Act*. While the Law Society of Ontario, for example, has confirmed that it will not consider it professional misconduct to commission a statutory declaration through video conference, though not teleconference as it is necessary to see the person, the statutory authority for a commissioner to do so differs from one province or territory to the next.

In light of current social distancing measures, the CBA Section asks the CRA to issue a comfort letter or policy statement that, until further notice, it will accept an unsworn statement of residency in the same manner as a sworn or declared statement.

It is understood that the CRA's acceptance of an unsworn statement would not impact the collateral measures in *Kau v. The Queen* that oblige a purchaser to make further enquiries when extrinsic risk factors of non-residency are present in a transaction.

We believe that these simple steps would facilitate a more efficient closing process in a time of exigent circumstances, where people simply want to get their house with minimal hassle.

Yours sincerely,

(original letter signed by Julie Terrien for Brett Horton)

Brett Horton
Chair, Real Property Section

cc. Chris Lewis - Manager, Excise and GST/HST Rulings Financial Institutions and Real Property Division, Real Property Unit