The Joint Committee on Taxation of
The Canadian Bar Association
and
Chartered Professional Accountants of Canada

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Dear Ms. Pursun:

Subject: Summary of Feedback on the EIFEL Administration

This submission sets out comments of the Joint Committee on Taxation of the Canadian Bar Association and Chartered Professional Accountants of Canada ("Joint Committee") in response to the consultation with respect to the Excessive Interest and Financing Expenses Limitation (EIFEL) proposals. The group has identified several potential improvements on the EIFEL Administration (Appendix A).

Members of the Joint Committee and others in the tax community participated in the discussion concerning this submission and contributed to its preparation, including:

- Ian Bradley – PwC LLP
- Alex Cook – PwC LLP
- Ryan Minor – CPA Canada
- Angelo Nikolakakis – EY Law LLP
- John Oakey – CPA Canada
- Michael O'Connor – KPMG LLP
- Janette Pantry – EY LLP
- Michael Shields – Doane Grant Thornton LLP
- Simon Townsend – RSM Canada

About the Joint Committee

Through the Joint Committee on Taxation, Chartered Professional Accountants of Canada (CPA Canada) collaborates with the Canadian Bar Association (CBA) to offer the federal government input on tax laws. For more than 70 years, this collaboration of CPA Canada and the CBA has regularly offered input to the Department of Finance on the technical aspects of new tax legislation. We also suggest improvements to simplify and improve current tax laws.

We would like to thank you for your consideration of this submission. If it would be helpful, members of the Committee would be pleased to discuss the issues in more detail.

Yours truly,

Carmela Pallotto

Carmela Pallotto, FCPA, FCA
Chair, Taxation Committee
Chartered Professional Accountants of Canada

Carrie Smit
Chair, Taxation Section
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APPENDIX A
FEEDBACK ON EIFEL ADMINISTRATION

1. Suggested Guidance Topics

a. <u>Group ratio rules in ITA 18.21</u>

Private groups and family trusts

The group ratio rules require consolidation at the top entity level. In many private Canadian owned groups, a family trust owns a portion of the top corporate entity. There are many instances where the family trust could be treated as the "parent" for consolidation purposes.

A consolidated audit is rarely done at the family trust level. Consolidation of the family trust with the corporate group creates a number of difficult issues. First of all, shares of the parent company will often be owned by family members (as well as the family trust). This will now result in minority interest reporting for the group which significantly complicates preparation of consolidated statements. Secondly, family trusts have to distribute their assets every 21 years or pay tax on the accrued gain. In the year of distribution, the family trust will only be the "parent" for a portion of the year and as a result, the group won't qualify for a full year consolidation since they do not have the same "parent" throughout the year.

The CRA should consider providing administrative relief in situations where a family trust is considered the parent for consolidation purposes, for example, to enable an uppermost corporation in the corporate group that prepares audited consolidated financial statements to be treated as the ultimate parent entity in such cases.

Acquisitions and dispositions of group entities in the year

The group ratio is calculated for a consolidated group for a "relevant period". What is the "relevant period" where a corporation has been newly incorporated or newly acquired during the year that the consolidated financial statements are prepared for? Similarly, what is the "relevant period" where a corporation has been disposed of during the year that the consolidated financial statements are prepared for? Will the entity be eligible for the group ratio for taxation years where the financial results of the entity are included in the consolidated financial statements for the portion of the year that the entity is an eligible group entity?

b. <u>Entities that lose excluded entity status</u>

The guidance currently states that the rules do not affect a corporation or a trust that is an excluded entity. While the IFE denial under subsection 18.2(2) and partnership IFE add back in paragraph 12(1)(l.2) make reference to the excluded entity definition, the calculations of absorbed capacity, ATI, excess capacity, IFE, and IFR will still apply to an excluded entity.

We recommend that the CRA provide guidance on recognizing amounts of absorbed capacity, ATI, excess capacity, IFE, and IFR for a taxpayer that was previously categorized as an excluded entity, but no longer qualifies as such for a particular tax year. Schedule 130 should accommodate taxpayers that grow into the EIFEL rules and are entitled to recognize a balance of CUEC, without the need for amending the three preceding tax returns. Similar concerns arise for taxpayers that may fluctuate in terms of having excluded entity status or not over extended periods. Schedule 130 may need to accommodate tracking balances of RIFE and CUEC notwithstanding excluded entity status.

c. Who should not have to file EIFEL forms

Future guidance should clarify what entities are not required to file EIFEL forms.

Suggestions include:

- entities that have none of the following: IFE, IFR, received capacity or transferred capacity, carry-forward CUEC or RIFE
- a general partner corporation of a limited partnership with a share of the income or loss of the limited partnership of less than 1%
- a segregated fund trust
- a partnership where all partners are exempt from tax under ITA 149(1)(c) to (d.6)
- non-Canadian partnerships that have no obligation to file a partnership information return (T5013)
- corporations and trusts that have no IFE and no eligible group entities in respect of themselves.

d. The meaning of “borrowing or other financing”

Guidance should be provided as to the meaning of “borrowing or other financing” in the definition of “interest and financing expenses” (IFE) and “loan or other financing” in the definition of “interest and financing revenues” found in section 18.2, including specific examples from CRA of the types of arrangements which may constitute meeting such definitions.

e. Application of non-capital losses and effect on adjusted taxable income and other EIFEL related amounts

Guidance should be provided with additional practical examples of the impact of the application of non-capital losses from other taxation years (including those carried forward and carried back) and how this should then impact the calculation of ATI through amounts within Variable A sub-variables D and E and also the adjustments included within Variable B(h) or (i). It would be welcome to see examples that consider, although are not limited to:

- An entity that has additional non-capital losses that will be utilized against taxable income resulting from a denial of interest and financing expenses resulting from the EIFEL rules, considering both when the entity is in a non-capital loss position or a taxable income position prior to the application of the EIFEL rules.
- An entity that has capital losses brought forward which constitute amounts that could be relevant for the purpose of IFE A (e) and non-capital losses brought forward and the interaction of using such capital losses going forward.

In addition, the Variable B(h) or (i) adjustment can result in an iterative calculation where a taxpayer has additional non-capital losses to utilize to shelter taxable income resulting from an interest and financing expenses denial resulting from the EIFEL rules. Clarification from CRA on the iterative and recommended calculation approach would be welcomed through guidance.

We attach to this submission a series of described (and self explanatory examples) that illustrate our collective understanding of how these rules apply, as well as offer the following guidelines for your consideration and confirmation:

i. A non-capital loss from another taxation year that was not used to reduce taxable income to zero when determining ATI and the IFE denial ratio for the year, may be used to further reduce taxable income for a denial for IFE under subsection 18.2(2), a partnership IFE add-back under paragraph 12(1)(l.2) or an adjustment for relevant affiliate IFE under subclause 95(2)(f.11)(ii)(D)(I), or subclause 95(2)(f.11)(ii)(D)(II) that created additional taxable income following the EIFEL computations;

ii. Where the amount of the loss claimed in the circumstances described in (i) above results in an iterative adjustment to ATI under either of paragraphs (h) or (i) of ATI; to the extent of embedded EIFEL attributes as described in variable J of paragraph (h) or to the extent of the 25% of the additional non-capital loss claimed against the IFE denial in the case of a specified pre-regime loss under paragraph (i) of ATI; the ATI will be increased and the IFE denial reduced. This will occur on an iterative basis until the amount of the IFE denial equals the amount of the loss from the other year that is needed to bring taxable income to zero.

iii. Despite the fact that no tax (or a lower amount of tax) is payable in the circumstances described in (i) above, the arising RIFE may be carried forward and recovered as a deduction in computing taxable income in a future year, where there is either excess capacity in the year or a transfer of CUEC received from an eligible group entity; and

iv. In the circumstances described in (iii) above, any RIFE recoverable in a future year in excess of the taxable income, will result in a non-capital loss for the year in which the RIFE is recovered.

f. <u>IFE within UCC/ resource pools</u>

Guidance should be provided as to how taxpayers should determine the amounts of IFE within UCC / resource pools. Specifically, will Schedule 8 or Schedule 12 be updated to pull out capitalized interest within such pools as a separately tracked amount going forward? In addition, how does CRA expect taxpayers to track this on Sch 8 or Sch 12 noting that assets may be pooled and capitalized IFE may be allocable to specific assets within such pools. Guidance upon tracking of such amounts specific to certain assets and whether the relevant Schedules will be updated would be helpful.

g. IFE Variable A (a) and Variable A (e)

Based upon the following comment from the Department of Finance ("Paragraph (e) of variable A includes in interest and financing expenses certain amounts that are not included under any of the other paragraphs in this definition, but can reasonably be considered to be part of the cost of funding with respect to a borrowing or other financing of the taxpayer or a non-arm's length person or partnership") we understand that interest amounts included in IFE A(a) should not be included in IFE A(e). Please could the CRA confirm in their guidance that they agree that interest amounts on a borrowing or other financing should only be included in IFE A(a) and not reported in IFE A(e) on the Schedule 130?

2. Administrative Relief

a. Leases

Taxpayers are required to calculate the implicit interest on historical leases using prescribed rates and assumptions as to the fair market value of leased property which may be difficult to obtain or costly to develop in the case of some leased property.

Many taxpayers are required to already calculate similar amounts for accounting purposes using interest rates determined under the relevant accounting standard (for example, IFRS 16). An administrative position to use the accounting lease interest could significantly reduce the administrative burden for taxpayers.

b. Relief for the late-filing of elections where the prescribed forms have not been released by the filing deadline

Administrative relief should be provided for a set period (for example, 60 days) following the public release of the forms for taxpayers to file any elections later than the legislative filing deadline, up to the end of the set period, on the basis that in advance of this date no prescribed forms were available which stipulated the detailed information to be reported.

#	These are various loss scenarios and illustrations of iterative EIFEL computations.	(A) Determine Net IFE for Purposes of the IFE Denial Ratio ENTER IFE AND IFR DATA ON	(B) Determine All other ATI Components (that are not IFE or IFR) = ~ATI												Taxable Income Computation				
#	EIFEL Rules Reference Entity Name	(A) Net IFE (IFR)	Taxable Income (Non-Capital Loss) Before 18.2(2), 12(1)(l.2), and 111(1)(a.1) and 95(2)(f.11)(ii)(D)) Current Year +/-	Capital Cost Allowance, Terminal Loss or (Recapture) +/-	B(h) NOL Add-back	C(g) 110.5 Amount	C(e) Corporate FTC Adj	B(i) 25% pre-regime loss	(B) ~ATI	ATI (A) + (B)	ATI, if it were allowed to be negative	EIFEL State	Excess Interest or (Excess Capacity), before CUEC Transfers or Prior Year RIFE Recovery	IFE Denial Ratio	Taxable Income (NOL) Before EIFEL	Own IFE Denial	Revised Taxable Income (NOL) Before Claim for Prior Year NOL	Other Year NOL Claim	Taxable Income (NOL)
1	Canco Base Case - Net IFE $1 million, No Taxable Income, No NOLs	1,000,000	-	-	-	-	-	-	-	1,000,000	1,000,000	Excess Interest	700,000	70.0000%	-	700,000	700,000	-	700,000
2	Canco - Net IFE $1 million, Taxable Income $1 million, No prior year NOLs	1,000,000	1,000,000	-	-	-	-	-	1,000,000	2,000,000	2,000,000	Excess Interest	400,000	40.0000%	1,000,000	400,000	1,400,000	-	1,400,000
3	Canco - Net IFE $1 million, Taxable Income $1 million but sheltered by prior year NOL of $600,000, no W-X-Y (embedded EIFEL elements).	1,000,000	400,000	-	-	-	-	-	400,000	1,400,000	1,400,000	Excess Interest	580,000	58.0000%	400,000	580,000	980,000	-	980,000
4	Canco - Net IFE $1 million, Taxable Income $1 million but sheltered by prior year NOL of $600 with W-X-Y = $600,000. Full embedded EIFEL elements in the NOL.	1,000,000	400,000	-	600,000	-	-	-	1,000,000	2,000,000	2,000,000	Excess Interest	400,000	40.0000%	400,000	400,000	800,000	-	800,000
5	Canco - Net IFE $1 million, Taxable Income $1 million but sheltered by prior year NOLs available of $5 million; no embedded EIFEL elements (W-X-Y = NIL).	1,000,000	-	-	-	-	-	-	-	1,000,000	1,000,000	Excess Interest	700,000	70.0000%	-	700,000	700,000	(700,000)	-
6	Canco - Net IFE $1 million, Taxable Income $1 million but sheltered by prior year NOLs available of $5 million; fully embedded EIFEL elements (W-X-Y = $5,000).	1,000,000	-	-	1,307,692	-	-	-	1,307,692	2,307,692	2,307,692	Excess Interest	307,692	30.7692%	-	307,692	307,692	(307,692)	-
7	Canco Base Case - Plus Canco makes 110.5 Designation of $1 million to allow a non-business FTC of $150k; as drafted EIFEL starting point includes 110.5 in TI and NOL therefore net zero. IFE Denial will Impact need for 110.5.	1,000,000	-	-	-	(1,000,000)	(535,714)	-	(1,535,714)	-	(535,714)	Excess Interest	1,000,000	100.0000%	-	1,000,000	1,000,000	-	1,000,000
8	Canco Base Case - Plus Canco makes 110.5 Designation of $1 million to allow a non-business FTC of $150k; as drafted EIFEL starting point includes 110.5 in TI and NOL therefore net zero. Apply 248(28) to remove double deduction from EIFEL Variable A.	1,000,000	1,000,000	-	-	(1,000,000)	(535,714)	-	(535,714)	464,286	464,286	Excess Interest	860,714	86.0714%	1,000,000	860,714	1,860,714	-	1,860,714
9	Canco - 110.5 added to convert 15% tax on non-business income. Subsection 248(28) applied to eliminate duplication.	1,000,000	4,000,000	-	-	(3,000,000)	(1,607,143)	-	(607,143)	392,857	392,857	Excess Interest	882,143	88.2143%	4,000,000	882,143	4,882,143	-	4,882,143
10	Canco - Loss in the year to illustrate Embedded NOL, with $2 million CCA claimed in the year	1,000,000	(1,000,000)	2,000,000	-	-	-	-	1,000,000	2,000,000	2,000,000	Excess Interest	400,000	40.0000%	(1,000,000)	400,000	(600,000)	-	(600,000)
11	Canco - Loss in the year to illustrate Embedded NOL, with $2 million CCA claimed in the year	1,000,000	(4,000,000)	2,000,000	-	-	-	-	(2,000,000)	-	(1,000,000)	Excess Interest	1,000,000	100.0000%	(4,000,000)	1,000,000	(3,000,000)	-	(3,000,000)
12	Canco - EBITDA of $2 million, CCA of $400k, prior year NOLs of $1.5 million; no embedded EIFEL elements, so take the 25%.	600,000	-	400,000	-	-	-	302,326	702,326	1,302,326	1,302,326	Excess Interest	209,302	34.8837%	-	209,302	209,302	(209,302)	-
13	Canco - EBITDA of $2 million, CCA of $400k, prior year NOLs of $1.5 million; fully loaded embedded EIFEL elements, so take the 100% add-back on NOLs actually claimed including against denied IFE.	600,000	-	400,000	1,000,000	-	-	-	1,400,000	2,000,000	2,000,000	Neutral	-	0.0000%	-	-	-	-	-
14	Canco - IFE of $1 million, CCA of $400k, EBITDA of $2 million, prior year NOLs of $1.5 million; no embedded EIFEL elements, so take the 25%.	1,000,000	-	400,000	-	-	-	274,419	674,419	1,674,419	1,674,419	Excess Interest	497,674	49.7674%	-	497,674	497,674	(497,674)	-
15	Canco - IFE of $1 million EBITDA of $2 million, prior year NOLs of $1.5 million; fully loaded embedded EIFEL elements, so take the 100% add-back on NOLs actually claimed including against denied IFE.	1,000,000	-	400,000	907,692	-	-	-	1,307,692	2,307,692	2,307,692	Excess Interest	307,692	30.7692%	-	307,692	307,692	(307,692)	-
	Sub-total for all group entities considered	19,200,000	1,800,000	5,600,000	3,815,385	(5,000,000)	(2,678,571)	576,744	4,113,557	24,849,272	23,313,557	Excess Interest	11,745,219		1,800,000	11,745,219	13,545,219	(2,022,361)	11,522,857

To view more entities un hide rows up to row 104

Example	NOL Prior Year	Initial Claim	Claim ag'in EIFEL	Total NOL Claim
12	1,500,000	(1,000,000)	(209,302)	(1,209,302)
13	1,500,000	(1,000,000)	-	(1,000,000)
14	1,500,000	(600,000)	(497,674)	(1,097,674)
15	1,500,000	(600,000)	(307,692)	(907,692)

#	These are various loss scenarios and illustrations of iterative EIFEL computations.	Taxable Income Computation					N+1 CUEC/RIFE Carryover Balances and Aging		Use rows on right to determine embedded EIFEL elements in prior year NOL.	-	-	0.0000%	-	-	-
#	EIFEL Rules Reference Entity Name	Taxable Income (NOL) Before EIFEL	Own IFE Denial	Revised Taxable Income (NOL) Before Claim for Prior Year NOL	Other Year NOL Claim	Taxable Income (NOL)	Prior Year CUEC in N+1	Prior Year RIFE in N+1	Deductible IFE for the Year	Non-capital Loss (NOL) for the Year	Embedded EIFEL Attributes (limited to NOL)	Paragraph (h) J/K for the NOL Add-back	W = Deductible IFE + Paragraphs (b) to (g) or (j) to (m) of the description of ATI B + RIFE Recovery` W	X = paragraphs (a) to (f), (h) or (j) of the description of ATI C for the taxpayer loss year + PIFE Add-back minus X	Y = Enter the Amount of Variable minus Y
1	Canco Base Case - Net IFE $1 million, No Taxable Income, No NOLs	-	700,000	700,000	-	700,000	-	700,000	300,000	-	-	0.0000%	300,000	-	-
2	Canco - Net IFE $1 million, Taxable Income $1 million, No prior year NOLs	1,000,000	400,000	1,400,000	-	1,400,000	-	400,000	600,000	-	-	0.0000%	600,000	-	-
3	Canco - Net IFE $1 million, Taxable Income $1 million but sheltered by prior year NOL of $600,000, no W-X-Y (embedded EIFEL elements).	400,000	580,000	980,000	-	980,000	-	580,000	420,000	-	-	0.0000%	420,000	-	-
4	Canco - Net IFE $1 million, Taxable Income $1 million but sheltered by prior year NOL of $600 with W-X-Y = $600,000. Full embedded EIFEL elements in the NOL.	400,000	400,000	800,000	-	800,000	-	400,000	600,000	-	-	0.0000%	600,000	-	-
5	Canco - Net IFE $1 million, Taxable Income $1 million but sheltered by prior year NOLs available of $5 million; no embedded EIFEL elements (W-X-Y = NIL).	-	700,000	700,000	(700,000)	-	-	700,000	300,000	-	-	0.0000%	300,000	-	-
6	Canco - Net IFE $1 million, Taxable Income $1 million but sheltered by prior year NOLs available of $5 million; fully embedded EIFEL elements (W-X-Y = $5,000).	-	307,692	307,692	(307,692)	-	-	307,692	692,308	-	-	0.0000%	692,308	-	-
7	Canco Base Case - Plus Canco makes 110.5 Designation of $1 million to allow a non-business FTC of $150k; as drafted EIFEL starting point includes 110.5 in TI and NOL therefore net zero. IFE Denial will Impact need for 110.5.	-	1,000,000	1,000,000	-	1,000,000	-	1,000,000	-	1,000,000	-	0.0000%	-	535,714	-
8	Canco Base Case - Plus Canco makes 110.5 Designation of $1 million to allow a non-business FTC of $150k; as drafted EIFEL starting point includes 110.5 in TI and NOL therefore net zero. Apply 248(28) to remove double deduction from EIFEL Variable A.	1,000,000	860,714	1,860,714	-	1,860,714	-	860,714	139,286	1,000,000	-	0.0000%	139,286	535,714	-
9	Canco - 110.5 added to convert 15% tax on non-business income. Subsection 248(28) applied to eliminate duplication.	4,000,000	882,143	4,882,143	-	4,882,143	-	882,143	117,857	3,000,000	-	0.0000%	117,857	1,607,143	-
10	Canco - Loss in the year to illustrate Embedded NOL, with $2 million CCA claimed in the year	(1,000,000)	400,000	(600,000)	-	(600,000)	-	400,000	600,000	600,000	600,000	100.0000%	2,600,000	-	-
11	Canco - Loss in the year to illustrate Embedded NOL, with $2 million CCA claimed in the year	(4,000,000)	1,000,000	(3,000,000)	-	(3,000,000)	-	1,000,000	-	3,000,000	2,000,000	66.6667%	2,000,000	-	-
12	Canco - EBITDA of $2 million, CCA of $400k, prior year NOLs of $1.5 million; no embedded EIFEL elements, so take the 25%.	-	209,302	209,302	(209,302)	-	-	209,302	390,698	-	-	0.0000%	790,698	-	-
13	Canco - EBITDA of $2 million, CCA of $400k, prior year NOLs of $1.5 million; fully loaded embedded EIFEL elements, so take the 100% add-back on NOLs actually claimed including against denied IFE.	-	-	-	-	-	-	-	600,000	-	-	0.0000%	1,000,000	-	-
14	Canco - IFE of $1 million, CCA of $400k, EBITDA of $2 million, prior year NOLs of $1.5 million; no embedded EIFEL elements, so take the 25%.	-	497,674	497,674	(497,674)	-	-	497,674	502,326	-	-	0.0000%	902,326	-	-
15	Canco - IFE of $1 million EBITDA of $2 million, prior year NOLs of $1.5 million; fully loaded embedded EIFEL elements, so take the 100% add-back on NOLs actually claimed including against denied IFE.	-	307,692	307,692	(307,692)	-	-	307,692	692,308	-	-	0.0000%	1,092,308	-	-
	Sub-total for all group entities considered	1,800,000	11,745,219	13,545,219	(2,022,361)	11,522,857	-	11,745,219	7,454,781	8,600,000	2,600,000		13,054,781	2,678,571	-