The Canadian Institute of Chartered Accountants
277 Wellington Street West
Toronto, ON Canada M5V 3H2
Tel: 416 977.3222 Fax: 416 977.8585
www.cica.ca

L'Institut Canadien des Comptables Agréés
277, rue Wellington Ouest
Toronto (ON) Canada M5V 3H2
Tél. : 416 977.3222 Téléc. : 416 977.8585
www.icca.ca

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Ms. Lise Potvin
Director
Sales Tax Division
Tax Policy Branch
Finance Canada
140 O'Connor Street
Ottawa, ON K1A 0G5

Dear Ms. Potvin:

Subject: Follow up to liaison meeting of May 22, 2012

Further to our meeting on May 22, 2012 in Ottawa, on behalf of the members of the CICA Commodity Tax Committee, we are pleased to provide comments and suggestions in respect of the matters below.

Call Centre Issue for Zero-Rating

We were asked to provide are our thoughts on possible wording changes for section 7, Part V, Schedule VI of the *Excise Tax Act* (Canada) ("ETA") as it relates to certain circumstances involving call centre services provided to non-resident persons. We were also asked to give specific details/examples where we can provide context for these possible wording changes.

In particular, where call centre services are supplied in Canada to a non-resident person, we understand that a position has been taken by the Canada Revenue Agency ("CRA") that where such services include answering a call from an individual in Canada, the zero-rating on the entire supply to the non-resident person is denied as section 7 will not permit zero-rating where a service is rendered to an individual while that individual is in Canada.

A call centre operated by a registrant in Canada for a non-resident customer may take calls from anywhere in the world "24/7". Under any given contract, it may have no calls from Canada or a few depending on the nature of the contract. The call centre is forced to enter into different contracts for global calls (outside Canada) and forced to track calls to determine if tax should apply to the non-resident customer. Otherwise, under a single contract, if it has 99% of calls from global (i.e., non-Canadian individuals) and 1% from Canadian individuals, it will be required to charge tax on the entire supply.

Some examples where this has application that we are aware of are, as follows:

1. Non-resident customer in Europe hires a Canadian call centre to take calls from anywhere in the world with staffing to enable acceptance and handling of calls 24/7. Calls are typically in regards to questions about the particular individual's accounts, billing enquiries or wanting to get set up as a client of the European vendor. No tax has been charged to the European customer as the Canadian call centre vendor (registered for Goods and Services Tax ("GST")) thought the charge would be zero-rated. They can track and quantify that 96% of the calls come from outside of Canada but 4% do come from within Canada. The services are not considered to be technical in nature and could not get zero-rating under section 23 and are not zero-rated under the provisions of section 5. They would be zero-rated under section 7 but for the provision that they have calls and service rendered to an individual in Canada.

2. A non-resident customer located in the United Kingdom ("UK") has contracted with a Canadian service provider to handle all of its needs relative to questions on software the UK company has sold globally to business customers. The call centre service supplied by the Canadian service provider in Canada takes calls on a variety of matters including how to use the software, billing arrangements, arranging for a training session, asking for updates. The Canadian service provider has informed the UK customer that it will commence charging GST on the services. Calls are not separated by questions and the software is not considered so technical that they would consider the services to be under section 23.

3. A Canadian company offers call centre services to clients globally. They are the front line for all calls coming in to their clients and redirect the calls where needed. Calls could be product related, about product warranties, accounts receivable, complaints, etc. The Canadian company either handles the call or redirects it to the right departments of their clients if they are unable to handle the particular question. They have a few US clients and have in the past always charged them GST. The non-residents are likely registered for the GST as they have not ever commented on the tax charge. A new US client has just hired the Canadian company and requires it to set up call centres around the world. At this time, calls could come in to any location from anywhere in the world. Locations around the world of the Canadian company range from branch operations to subsidiaries. The US customer wants only the Canadian company to charge for the service under one contract. The Canadian company is exploring options as they are worried about the exclusions under the particular zero-rating provisions and the US client has indicated they will go elsewhere if they intend to charge them GST.

Registrants providing call centre services do explore providing different contracts for different locations. Alternatively some explore different numbers for Canadian calls to track the calls. However, it is our understanding that neither of these options is the usual business practice of the call centres. It appears that the bigger concern of the call centre industry is with this latter scenario in that they could lose customers as a result to other call centre providers outside of Canada who will not charge non-recoverable GST.

As noted, the CRA views the provision to be all or nothing. If the provision (i.e., section 7) would be changed to permit a prorating of any consideration relating to the service as between the portion of the

service that would be excluded from zero-rating and the portion that qualifies for zero-rating (e.g., through the use of "to the extent of" wording) that would be beneficial. In addition to the prorating approach, the legislation should allow for full zero-rating where all or substantially all of the calls do not involve Canadian resident individuals. Conversely, no zero-rating would apply where all or substantially all of the calls are with Canadian resident individuals.

Finally, consideration should be given to allowing full zero-rating in circumstances where the call centre services are supplied to a non-resident person not registered for GST purposes where the services relate to supplies made to Canadian individual consumers and it is reasonable to conclude that those individuals have paid GST/Harmonized Sales Tax ("HST") on the purchases/importations of the property or services giving rise to the right to access the call centre services. For example, a Canadian individual who acquires a laptop manufactured by a non-resident manufacturer and sold through retailers in Canada can call a help desk when he/she has questions about the laptop. The price paid for the laptop at the retailer builds in the help desk support and GST/HST was collected by the retailer for the laptop. If zero-rating does not apply to the non-resident manufacturer that hires a Canadian call centre service provider to handle these calls, then GST/HST is "trapped". It would seem from a policy perspective that this is not correct outcome.

Feedback on Transition Rules for British Columbia ("BC") de-harmonization and Nova Scotia ("NS") rate reduction.

For the upcoming BC de-harmonization/NS rate changes, the general transitional rule for GST/HST will operate on the basis of the time at which tax in respect of the supply becomes payable under the ETA. Pursuant to subsection 168(1) of the ETA, tax generally becomes payable on the earlier of the day that consideration is paid and the day that consideration becomes due. For example, as regards the situation in BC where the tax is payable before April 1, 2013, HST will apply. Where the tax is payable on or after April 1, 2013, GST will apply, as well as BC's new provincial sales tax ("PST"), where applicable. These rules are a departure from than the historic "pro-rating approach" to transition, as demonstrated when BC and Ontario harmonized on July 1, 2012.

Specifically with regards to services, the "new" transitional rules are significantly simpler than having to track to what extent services have been performed prior to or on / after the implementation date. This is a welcomed development and we would encourage this approach going forward. Nevertheless, the simpler test does create the possibility of "rough justice" whereby some could perceive a service being subject to HST or GST/PST an inequitable result. This will likely depend on the status of the person acquiring the service (e.g., business v. individual).

Practically, one would expect there to be a particular focus on invoicing to ensure consistent treatment/application with intention of parties. Moreover, we would envision an impact on procurement strategy with some registrants accelerating or delaying purchases prior to BC de-harmonization based largely on their ability to recover input tax credits. As regards the rate change in Nova Scotia there could be a similar result albeit more tied to consumers and their timing vis-à-vis purchases of big-ticket items (i.e., wait to purchase expensive items such as an automobile until the lower HST rate is in effect).

Feedback in connection with the use of the Annual Information Return Form ("GST 111")

We were asked to provide feedback in connection with the use by registrants of GST 111, specifically the challenges that registrants have experienced in completing the form. Our comments/recommendations are summarized as follows:

- Generally, the main concern raised by registrants is that the information required on the form is not readily available from any other financial reporting sources, and thus must be created specifically for purposes of the GST 111. For example, the breakdown between purchases of financial and non-financial services, or the amount of GST paid under Division III of the ETA in respect of imported goods. Typically, this information is not required for any other filing or reporting purposes, e.g., financial statements, regulatory filings, etc. and must be created solely for purposes of the return.

- Part D – Registrants are finding this part especially difficult to complete. In particular, the breakdown between internal and external charges and the breakdown of GST/PVAT on internal/external charges. This ties in to the broader imported services issues, in particular the difficulty in obtaining a breakdown of the charges. Management fees are not usually broken down or detailed even within related party transactions. As a result, it is often extremely difficult for registrants to complete Part D accurately.

- The return requires specific tracking of HST and the components thereto, and many financial institutions do no track this, especially if the amount is expensed either in part or in whole. This is especially true for insurers in the property and casualty insurance industry who generally do not track the GST/HST in relation to claims costs.[1]

- A number of comments received centre around the complexity of the GST 111 and the lack of clear and concise guidance as to how to reconcile amounts to other available financial reports, such as general ledger summaries. For example, some amounts that are required to be reported on the GST 111 form may be offsets in other accounts (e.g., revenue offsets in expense accounts and vice versa). These comments are especially applicable to amounts reported in boxes 090 and 190.

- Significant concerns about the potential penalties imposed for failing to file or incorrectly filing the return. For example, a return that is inadvertently not filed could be subject to significant penalties of $1,000 per box, or situations with deemed year ends resulting in the requirement to file multiple returns, with potential penalties associated with each box on each return.

- Finally, for some registrants who are currently required to file the GST 111 form, the exercise is particularly cumbersome and counter intuitive given the nature of their operations/businesses. In particular, this is especially true for registrants that have minimal financial services activities and are simply required to file the form due to the fact that they are "financial institutions" for GST purposes simply by virtue of having made an election under section 150 of the ETA or the de minimis tests under either paragraphs 149(1)(b) or (c).

[1] In this regard, insurers who are "selected listed financial institutions" are not required to include GST/HST paid on these costs for purposes of the "special attribution method" in subsection 225.2 of the Excise Tax Act.

In the Committee's view, a number of the registrant's concerns can be addressed with relatively simple changes that should not significantly impact CRA's and Finance's information requirements. We provide some recommendations for your consideration:

- Eliminate the requirement for insurers to provide details of the GST/HST paid on claims costs that are prescribed amounts of tax for the purposes of paragraph (a) of the description of A and paragraph (a) of the description of F in subsection 225.2(2) of the ETA (namely, any amount of tax that became payable by an insurer, or that was paid by the insurer without having become payable, in respect of property or services acquired, imported or brought into a participating province exclusively and directly for consumption, use or supply in the course of investigating, settling or defending a claim arising under an insurance policy that is not in the nature of accident and sickness insurance or life insurance).

- Raise the $1 million income threshold in determining whether a registrant is required to file the GST 111.[2]

- Eliminate the requirement for financial institutions that are financial institutions only by virtue of the section 150 election and that have less than 10% exempt "financial services" activities from filing the GST 111.[3] This could apply equally to financial institutions that are deemed to be such as a result of the de minimis test under paragraph 149(1)(c) of the ETA and where they have minimal exempt financial services activities.

We trust that Finance finds our feedback helpful. We would be pleased to discuss this feedback if Finance would find it useful to do so.

Yours truly,

Danny Cisterna
Chair, Commodity Tax Committee
Canadian Institute of Chartered Accountants

C.c.: Ms. Danielle Laflèche, CA
Director General , Excise and GST/HST Rulings Directorate
Canada Revenue Agency

Gabe Hayos
Vice President, Taxation, Canadian Institute of Chartered Accountants

[2] The $1 million threshold is quite low in today's economic environment. Many small businesses are caught by the requirement to comply with filing the GST 111 which significantly adds to their overall compliance requirements/burden.

[3] Given that these businesses are substantially engaged in other activities, the information required to be filled in the GST 111 is very difficult/cumbersome to obtain.